United States Court of Appeals

for the Second Circuit

APPENDIX

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74-1520

Appendix

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel. MARTIN SOSTRE,

Petitioner,

-v-

CIVIL DOCKET
NO. 1972-237

FRANK A. FESTA, Superintendent of the Erie County Jail, and ROBERT J. HENDERSON, Superintendent of the Auburn Correctional Facility,

Respondents.



Proceedings held before the Hon. John T. Curtin, United States District Judge, in Part II, United States Court House, Buffalo, New York, commencing on May 29, 1973.

APPEARANCES: HERMAN SCHWARTZ, Esq., Attorney for Petitioner; PAUL CHEVIGNY, Esq., HAYWOOD BURNS, Esq.,

LOUIS J. LEFKOWITZ, Attorney General of the State of New York, Attorney for the Respondent ROBERT J. HENDERSON; DOUGLAS S. CREAM, Assistant Attorney General, of Counsel.

MICHAEL F. DILLON, District Attorney of the County of Erie; PETER J. NOTARO, Assistant District Attorney, of Counsel.

ANTHONY MANGUSO, Corporation Counsel, City of Buffalo; WILLIAM E. CAREY, Assistant Corporation Counsel, of Counsel.

SAMUEL L. GREEN, Esq., Attorney for the Witness ARTO WILLIAMS.

PAGINATION AS IN ORIGINAL COPY

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PROCEEDINGS: May 30, 1973, 10:15 a.m.

APPEARANCES: As before noted.

THE COURT: Mr. Schwartz, who will take care of the questioning?

MR. SCHWARTZ: Mr. Chevigny will. Let me introduce co-counsel at the table.

THE COURT: All right.

MR. SCHWARTZ: And enter their appearances for them. I ask leave to have admitted on motion for the purposes of this case Mr. Paul Chevigny, a member of the Bar of the Southern District of New York; Mr. Haywood Burns, a member of the Bar of the Southern District of New York and Mrs. Lynn Walker, also a member of the Southern District of New York. As I indicated, the hearing will be conducted primarily and probably exclusively by Mr. Chevigny.

THE COURT: Very well. Glad to have you here, Mr. Chevigny, and I grant your motion.

MR. CHEVIGNY: Thank you, your Honor.

MR. BURNS: Thank you, your Honor.

MR. CHEVIGNY: Your Honor, at this time, the moving party, the petitioner would move for the

exclusion of witnesses on both sides of the case.

MR. CREAM: If your Honor please, this is a civil proceeding and there is no need that witnesses be excluded.

THE COURT: I know, Mr. Cream, but it seems to me that it is the credibility of the witness which is really the whole issue here. I think it would be better if we would proceed in that fashion. I know that you didn't try the case, Mr. Cream, and it may be that it may be essential that someone be with you. If that is the case and you need an exception for certain witnesses, tell me and we will take it up, but I would think that the best course to follow is to have witnesses excluded except the witness who is testifying.

MR. CREAM: In that event, your Honor, may I ask that Mr. Notaro be exempted.

THE COURT: Did Mr. Notaro try the case?

MR. CREAM: He did, your Honor.

MR. CHEVIGNY: I have no objection.

THE COURT: Fine. Any other witnesses here that you can see, Mr.Chevigny?

MR. CHEVIGNY: Except for the petitioner.

THE COURT: Except the petitioner.

MR. CHEVIGNY: I don't see any witnesses, your Honor.

THE COURT: Very well.

MR. CREAM: I see no one.

THE COURT: If any should come to your attention, please let me know. Anyone here that thinks they may be a witness, please step out. A man raised his hand. All right; very well.

MR. CHEVIGNY: The petitioner has served thirty subpoenas, your Honor, on the New York State Police and on the Buffalo City Police and at this time, I would like to ask for a return on those subpoenas. There has been a previous discussion with Mr. Cream concerning the State Police and I would like a statement on the record concerning the return. I have here the return concerning part of the subpoenas and I would like a representation concerning the whole. We subpoenaed all papers concerning Martin Sostre and all papers concerning Arto Williams and all films and photographs taken by the State Police

and I have received a report of Investigator Rock and nothing else. I would like to know if there is anything else that can be brought in on that report.

MR. CREAM: May it please the Court, we have returned all of the records which are covered by the subpoena which the New York State Police have in their records. Arto Williams was an informant of the Buffalo Police Department and we have no records relative to him.

THE COURT: Now you are speaking as the Attorney General and for the New York State Police.

MR. CREAM: That is correct. With reference to photographs taken, I have already informed Mr. Chevigny and Mr. Schwartz that those photographs, because of technical reasons, did not come out and there are none. As far as the subpoenas to the Buffalo Police Department, your Honor, I have no knowledge as to return of those.

THE COURT: Mr. Carey.

MR. CAREY: Yes, your Honor.

THE COURT: For the record, Mr. Carey, can you state your full name and who you are

appearing for?

MR. CAREY: William E. Carey, Assistant Corporation Counsel for the City of Buffalo. I am here representing Captain Bolas, captain in charge of the Narcotics Squad for the Buffalo City Police Department. Your Honor, we received subpoenas requesting the complete investigation conducted by the Buffalo Police Department which led to the indictment and conviction of Martin Sostre, I believe, in the year 1968 or '9. We have turned those records over to the defendant pursuant to this subpoena with deletions and those deletions concern certain informants heretofore not named in any proceeding involving Mr. Sostre. We feel to reveal the names of those individuals at the time will place them and members of their families in a position which would not be favorable to their health or safety. We further believe that as a general policy, those names should not be revealed because of the need of the Buffalo Police Department and all law enforcement groups to rely on informants

and to be able to maintain confidential relationships with them and so those names were deleted.

THE COURT: Mr. Carey, please. Mr. Chevigny, you have received a report from Captain Bolas?

MR. CHEVIGNY: Yes, I have. I wonder if we could mark the one from the State Police Exhibit A for identification, an the other one has Exhibit B.

THE COURT: Mr. White will mark them.

(Petitioner's Exhibit Number 1 marked for identification.)

(Petitioner's Exhibit Number 2 marked for identification.)

MR. CHEVIGNY: I don't think it will be necessary to put them in evidence, but I think it should be clear what we are dealing with.

THE COURT: Mr. Chevigny, we will wait until he has finished.

MR. CAREY: Now- -

THE COURT: Just a minute, Mr. Carey.

MR. CAREY: I am sorry.

THE COURT: Mr. Chevigny, you have heard Mr. Carey's statement about the records and

also the deletion of the names of certain informants. What is your response to that?

MR. CHEVIGNY: At this time, your Honor, at this particular moment, I don't see any necessity to contest it. Without waiving the right to contest it if the need should arise, I don't think we need to litigate that now because I don't see any necessity for it in this proceeding at this point.

MR. CAREY: There was a second request of counsel in this subpoena for certain letters that apparently were sent by Arto Williams or were alleged to have been sent by Arto Williams to the Buffalo Police Department. We have no such letters in the official files of the Buffalo Police Department and if such letters were, in fact, written, we have concluded that those letters were private in character and probably addressed to Mr. Alvin Gristmacher, formerly of the Buffalo Police Department, and those records just were not kept as part of the official records of our department so we just cannot produce them.

THE COURT: All right.

MR. CAREY: I believe that that was the extent - -

THE COURT: Anything else, Mr. Chevigny?

MR. CHEVIGNY: No, your Honor. I think that that covers it.

THE COURT: Thank you, Mr. Carey.

MR. CAREY: That's all I have, your Honor.

MR. CHEVIGNY: Thank you. At this time, the petitioner would call Arto Williams in support of his petition. Withdrawn, your Honor. At this time, the - -

THE COURT: Mr. Hoffarth, you don't need Mr. Williams now. Hold Mr. Williams a minute, Mr. Hoffarth.

MR. CHEVIGNY: At this time, your Honor, I challenge the return of the State Police upon the ground that the section, - Paragraph 5 on Page 4 of Exhibit 1 for identification states that on 7-8-67 and 7-10-67 Investigator J. D. Steinmetz and Trooper J. P. Wilcox operating from an observation post across the street from the Afro-Asian Book Store, took motion pictures of all the persons therein leaving the premises at 1412 Jefferson Avenue. A review of the

photos also resulted in a positive identification of numerous known narcotic addicts in the Buffalo area. I would call for a further search and production, your Honor, on the ground that at some time there were photos apparently which did come out and in view of the testimony given at the trial, which I have every reason to believe would be reiterated here with regard to the vantage point of those photographers and other similar evidence, I think it is essential to this proceeding that the photographs, if they exist, be produced.

THE COURT: Mr. Cream, do you know anything about that?

MR. CREAM: Yes, your Honor. I inquired of counsel for the Division of State Police and he informs me that there are no photographs in the official files of the Division of New York State Police.

THE COURT: Were the photographs marked in evidence and used at a hearing or as part of the trial?

MR. CREAM: Not to my knowledge.

THE COURT: Why don't you confer with Mr. Notaro about that.

MR. CHEVIGNY: They weren't your Honor.

MR. CREAM: Your Honor, apparently, the motion picture did, at one time, exist. The Division of New York State Police did, in fact, search its files and were unable to locate it. Speaking with Mr. Notaro from the District Attorney's office, he likewise caused a search of his records to be made and was unable to locate it. Should the Court so direct, we will continue to search for the film to determine if they, in fact, can be produced. At this point, neither the Division of New York State Police nor the District Attorney of Erie County is able to produce those films.

THE COURT: These pictures were taken by officers of the New York State Police?

MR. CREAM: They were, your Honor.

THE COURT: I suppose that they would have them in their custody during the course of the investigation and the subsequent hearings and trial?

MR. CREAM: Your Honor, we have tried to determine to date the course that that film took through the various agencies which were involved in this proceeding.

THE COURT: Are the officers still with the State?

MR. CREAM: They are, your Honor, and I have discussed this matter with them and they are unable to shed any light on the locality of that film.

THE COURT: Would there be some place, some custodian of evidence for the New York State Police?

MR. CREAM: Your Honor, all I can represent to the Court at this time is that I requested that a diligent search be made for those films. The area of the search and the manner in which the search was conducted is entirely beyond my knowledge. I have been informed that those films have not been located. The District Attorney of Erie County likewise informs me he cannot locate them either. As to where they might be, I am unable to shed any light on, if, in fact, they exist at all.

THE COURT: Mr. Chevigny, what do we do?

MR. CHEVIGNY: Well, I think the most practical thing to do would be to proceed with the hearing, your Honor, and if an occasion should arise, as I think it will, when the necessity becomes clear, we can take it up again and if they really are not in existence, then nothing can be done about it and the evidentiary effect - -

THE COURT: Mr. Cream, it seems to me it may be necessary in order to clear the air here to find out, to have the officers who had custody of the film explain to us what they did with it and then we will follow the chain on down to find out what happened.

MR. CREAM: May I have a moment, your Honor?

THE COURT: Surely.

MR CHEVIGNY: Could I speak to Mr. Cream for a moment off the record?

MR. CREAM: Your Honor, the film which I represented to this Court did not come out, did, in fact, not come out. There was a film taken some three days earlier which did come out technically from which the

District Attorney's office was able to positively identify no narcotic users. That film, however, was taken some three days prior to the event now in question and, therefore, whether it be produced or not be produced, I think would not be relevant to the issue before this Court anyway.

MR. CHEVIGNY: Just a minute. Wait a minute.

THE COURT: Mr. Chevigny, wait a minute.

MR. CHEVIGNY: Just a minute. A misrepresentation has been made to this Court. We ask for all photographs taken in June and July and the representation was made that there were no photographs.

THE COURT: Mr. Chevigny, just a minute. We are not going to get anywhere at all if people are going to start making speeches. Mr. Cream, the question of relevancy is not for you to determine. There is a subpoena here. Your obligation is either one of two things; either to produce the material or to move to quash the subpoena, or if the material does not, in fact, exist, then to make an explanation of it.

I think the best course to follow is for you to have the people who had this in charge make additional investigation and, through the State Police or the District Attorney or whoever may have information about it and then report back either informally with Mr. Chevigny or in a formal manner if the informal discussions do not solve the problem and then at that time, we will either have the film or we will not have it, and we will determine what to do next.

MR. CREAM: I wish, your Honor, to make clear to the Court that the film which did develop technically is, at this moment, lost. It is unavailable and we have not been able to find it and we will continue to search for it. I made no determinations prior to the return of the subpoena as to the relevancy or irrelevancy and I attempted in due diligence to return that film today and have been unable to locate it. The film taken that night, in fact, does not exist and, in fact, did not develop.

THE COURT: As far as the other films taken three days before, again, will you - -

MR. CREAM: We will search for it.

THE COURT: All right. Now, Mr. Chevigny, may we proceed?

MR. CHEVIGNY: Parenthetically, your Honor, - this is on the record - -

THE COURT: Mr. Chevigny, may I say everything is on the record.

MR. CHEVIGNY: Yes. With a view to assisting Mr. Cream, Mr. Felicetta testified in the House Un-American Activities Committee on June 20, 1968 and at one point he said, "I have the film here and with your permission, I will leave it with the Committee."

MR. CREAM: Thank you.

MR. CHEVIGNY: I don't know whether it is still there or whether it came back to Mr. Felicetta or whether he ever left it with the Committee.

MR. CREAM: Which committee is that?

MR. CHEVIGNY: House Un-American Activities Committee.

MR. CREAM: In Washington?

MR. CHEVIGNY: In Washington, yes. Photographs taken of those persons who were going in the

book store at 1412 Jefferson Avenue. I don't know whether those were stills. Yes. Let me give the citation. This appears in hearings before the Committee on un-American activities of the House of Representatives, 90th Congress, Second Session, June 20, 1968, Part V, Buffalo, New York, Page 2017.

MR. CREAM: Those hearings were held here in Buffalo?

MR. CHEVIGNY: I believe those hearings were held in Washington. They were held in Washington, yes.

THE COURT: Mr. Chevigny, it would appear to me that two courses may be followed. Mr. Cream would make his search and I would think, it would seem to me, that if this is important to you that you would also contact the appropriate officers of the Committee and perhaps be able to get the film on your own.

MR. CREAM: Your Honor, I wonder if counsel was aware of that at the time the subpoena was made out, and if so, I would like to move to quash the subpoena as far as the

Division of New York State Police.

THE COURT: I will defer consideration of that.

MR. CHEVIGNY: I wasn't aware of that at the time and it indicates they don't belong to the House un-American Activities Committee. They belong to the Police.

THE COURT: Wherever they belong is not the point. It is who has the material at the present time. Now, what next?

MR. CHEVIGNY: At this time, the petitioner will call Arto Williams.

THE COURT: Mr. Cioffe. Any press, - we will use the jury box for the press.

A R T O W I L L I A M S (Los Angeles, California), a witness called by and in behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHEVIGNY:

MR. GREEN: Your Honor, I am Samuel Green. I am the attorney for Mr. Arto Williams and I would like to have permission to sit near Mr. Williams in the event it should become necessary for him to consult with me.

THE COURT: Certainly. Is there a place over there, Mr. Green?

MR. GREEN: Yes, there is a place over there.

BY MR. CHEVIGNY:

Q Mr. Williams, you are represented by counsel now, are you not?

A Yes.

Q Have you consulted with your lawyer about your possible testimony here today?

A I have.

Q How many times have you met with Mr. Green?

A Three times.

MR. GREEN: Your Honor, if I could interrupt at this time, could I put on the record the fact that I have discussed this case with Mr. Williams and where and how I happened to come into the case?

THE COURT: All right. That may be the chronological way to do it.

MR. GREEN: Yes. Your Honor, I contacted Mr. Williams out at the Erie County Penitentiary on the 26th of this month, May 26th, a Friday. The reason I contacted Mr. Williams is I had been contacted from New York City by Mr. Haywood Burns who is with the

National Conference of Black Lawyers. I have worked with Mr. Haywood Burns on other cases. I am not a member of the National Conference of Black Lawyers. I am a private practicing attorney in Buffalo. He, at the time, discussed with me the fact that this Sostre hearing was going to be held and that Mr. Arto Williams was going to come in and testify and it was possible that certain statements that he might make here could cause charges being laid against him at a later time. He stated that he felt that Mr. Williams should be protected by someone, someone not connected with the Sostre group or the Sostre movement, nor anyone directly connected with the National Conference of Black Lawyers. I told him I would discuss it and think about it, at which time I called him back later and told him I would consult with Mr. Williams and if Mr. Williams so desired for me to be his attorney, I would undertake to represent him. I went out to the Erie County Penitentiary, as I stated previously; I

discussed with Mr. Williams my position, told him how I happened to be there. He, at that time, asked me himself to be his attorney. He also knows fully well, your Honor, that his testimony here and prior affidavits and sworn statements that he has made he can be prosecuted both by the State and/or Federal Government if such crimes are going to be committed. He realizes that there is a conflict in his testimony. I have made him fully aware that it is strongly possible that he will be prosecuted. He understands this. He stated that at the time he testified on this case back in 1967, he was under duress and coercion; that certain things were promised to him and given to him - -

THE COURT: Mr. Green - -

MR. CREAM: Your Honor, I am going to object to that.

THE COURT: We will hear his testimony. I would think that now whatever your involvement is - -

MR. GREEN: Yes. I would like to wind up then by saying, your Honor, I have made Mr.

Williams fully aware of the fact that he could be prosecuted for what he is saying here today.

THE COURT: Thank you.

MR. GREEN: Thank you.

THE COURT: Mr. Chevigny.

BY MR. CHEVIGNY:

Q Thank you. Mr. Williams, did you ever see me before today?

A Yes, I have.

Q Where did you see me?

A In Saugas, California.

Q Do you recall about when that was?

A During the early part of May.

Q And was I in the company of anyone else?

A Mr. Haywood Burns.

Q And did Mr. Burns and I at that time, - withdraw it. Did you at that time give us an affidavit?

A Yes, I did.

Q All right. Where are you now, - withdrawn. How long ago did you come to Buffalo?

A Last Tuesday.

Q And under what circumstances; how did you get here?

A I guess I was flown back by the Federal Marshal.

Q Are you incarcerated at the present time?

A. I am.

Q. Are you incarcerated in California?

A. I am.

Q. Can you tell the Court in a few words for what you are incarcerated in California; pursuant to what sort of charge or mandate of the Court are you incarcerated in California?

A. Dangerous drugs, sale of dangerous drugs, they say.

Q. Now, did you testify in this city in a case against Martin Sostre during the year 1968?

A. Yes, I did.

Q. Now, I direct your attention to the period of June and July, 1967. Did you, at that time know Martin Sostre?

A. I did.

Q. In what connection did you know him?

A. Insofar that he owned the book store and that I bought a few books from him and we had, you know, slightly acquainted, rap sometime when I go in the book store.

Q. Before June of 1967, can you estimate how many times you saw Mr. Sostre?

A. Would you repeat that?

Q. Yes. I am sorry. It is a long question. Before June of 1967, could you estimate how many times you saw Mr. Sostre?

A. No, I couldn't.

Q Would you be able - -

A I would say daily because I usually hang around that corner.

Q About how long had you known Mr. Sostre?

A Maybe a year, year and a half.

Q Now, in June of 1967, did there come a time that you were arrested?

A Yes.

Q And do you recall about when that was?

A I guess it would be about June of '67.

Q Do you recall for what you were arrested?

A Yes.

Q What was it?

A Stealing an air conditioner.

Q Did you have a, - did you, at that time, have a criminal record?

A Oh, I did.

Q Did you have any felonies on your criminal record before that time?

A Yes.

Q Now, were you released from incarceration during July of 1967?

A Yes, I was.

Q Did you contact anyone by mail during June or July of 1967?

A. I did.

Q. Would you tell us who or what organization you contacted?

A. I didn't contact anyone directly. I just wrote to the Buffalo Police Narcotics Division.

Q. And subsequently, did you see anyone connected with the Buffalo Police Narcotics Division?

A. A few days after that Alvin Gristmacher came over and saw me.

Q. And did you have a conversation with Alvin Gristmacher?

A. Yes.

Q. Can you tell us, in substance, what was said?

A. He asked me did I know anyone selling drugs in the Buffalo area. I told him I did. I named a few people off to him and he didn't seem interested in those. He mentioned Martin Sostre and asked me was I familiar with him and I said "Yes, I am", and he said, "Do you know whether he is selling drugs", something to that effect, you know, something like that.

MR. CREAM: If the Court please, I object to the characterization of the conversation had if they're going to be so imprecise.

THE COURT: Overruled. There is no jury here, Mr. Cream. You state your objection. I will overrule your objection.

BY MR. CHEVIGNY:

Q The objection is overruled. Go ahead with your narrative, please; anything else that you remember Mr. Gristmacher saying?

A As I was saying, he asked me did I know Martin Sostre was selling drugs and I thought about it for a while and I said,"Yes", and he said, "Well, we are very interested in Sostre because we believe that he was the cause of the riot at the time in '67". He asked me - -

THE COURT: Mr. Williams, you will just as carefully and accurately tell us what these individuals said to you.

THE WITNESS: Yes, sir, your Honor.

THE COURT: All right.

BY MR. CHEVIGNY:

Q If you don't, - Mr. Williams, tell us in your own words and substance what you remember, - if what you are telling us is not an exact quotation tell us that this is the substance of the conversation as you remember it. Did Mr. Gristmacher tell you anything else in words or in substance at that time, the first visit?

A I think he did because it lasted about half an hour, but I can't recall everything he said.

Q Did you say anything to Mr. Gristmacher at that time?

A Yes.. I told him I would be willing to cooperate with him

being an informant for him.

THE COURT: Mr. Williams, at this time, were you in jail or were you out on bail?

THE WITNESS: I was in the Erie County Jail at the time.

THE COURT: All right.

BY MR. CHEVIGNY:

Q Did you ever see Mr. Gristmacher again while you were in jail?

A About a week later, about 2:00 o'clock in the morning, I was called from my cell and was taken into a little room and Alvin Gristmacher, Chief Amico and other police officers was in the room.

Q And what was said, if you recall?

A He asked me would I repeat.

Q When you say "he", who do you mean when you say "he asked me"? Who's "he"?

A Alvin Gristmacher.

Q Go ahead.

A Asked me would I repeat to Chief Amico what I said to him in the previous conversation, so I told him, you know, that I knew Martin Sostre and that I had bought drugs off of him and I would be willing to help him.

Q Did anyone say anything after that?

A Well, Chief Amico related to me then that he was, - that

they were interested in Martin Sostre because they felt that he was the cause of the riot at the time.

Q Now, was what you said about having bought drugs from Sostre at that time true or false?

A False.

Q What was in your mind at the time that you spoke, that you said to Mr. Gristmacher and Mr. Amico that you had bought drugs and were willing to cooperate with regard to being an informant?

A What was on my mind was getting out of jail.

Q Now, did anything happen shortly after the time that Mr. Amico came to visit you?

A Yes. He left the room about five minutes and then he came back and told me that he couldn't get in contact with the judge, some judge that night, and that I would be released the next day.

Q Did anything happen the next day?

A I guess about noon I was called from my cell; was taken over to the court house and was taken to the judge's chamber. I can't recall the words, but I was released on "OR".

Q You were released on "OR"?

A Own recognizance.

Q Your own recognizance, is that what you mean?

A Right.

Q. Thank you. Where did you go from there, if anywhere?
A. I can't recall what policeman was in the room at the time, but we went from the court house over to Police Headquarters.
Q. Did you go in the company of a policeman?
A. I wouldn't say exactly in the company of a policeman because I followed him over. He walked ahead of me and I walked behind.
Q. And you walked to Police Headquarters, is that right?
A. That's correct.
Q. Were you there after employed as an informant by the then Sergeant Gristmacher?
A. Yes, I were.
Q. Did you see Sergeant Gristmacher that day?
A. Yes. When I got over to the Police Department, I was taken up to the Narcotic Division and I met Sergeant Gristmacher there and I was given some money and told where to meet him later that night.
Q. You were given money by Mr. Gristmacher?
A. Yes.
Q. Do you recall about what time of day that was?
Well, let me ask you this more generally; was it before sundown?
A. Yes.
Q. All right. Did you meet Sergeant Gristmacher later that

day?

A. About 9:00 o'clock.

Q. And where did you meet him?

A. I met him on Winslow.

Q. Did you have any occasion to make any use of the money during the time that you first saw Sergeant Gristmacher and the second time?

A. Yes.

Q. What happened; what did you do?

A. I left Police Headquarters and went and got high.

Q. At the time that you encountered Sergeant Gristmacher, were you still high, later in the day?

A. At the time I met him?

THE COURT: Mr. Chevigny, excuse me. You asked him what he did with the money. What did you do with the money, Mr. Williams?

THE WITNESS: I went and bought drugs with it.

THE COURT: Go ahead, Mr. Chevigny.

BY MR. CHEVIGNY:

Q. And you, as the expression is, you shot up those drugs, is that right?

A. Most of it, yes.

Q. Did you keep any of it?

A. A portion of it.

Q. And were you high when you went to meet Sergeant Gristmacher

at 9:00 o'clock?

A. Very much so.

Q Now, tell us, - tell the Court what happened at the time you met Sergeant Gristmacher; who was there, what you did.

A When I met Sergeant Gristmacher he was alone and we drove down to Buffalo Police Department. He left me in the car; went inside and I think he was gone about fifteen minutes and he came back and he had another plainclothes police officer with him and he introduced me to him and so forth.

Q Do you now know the name of the police officer that you met?

A No.

Q All right. Did Sergeant Gristmacher do anything to your person?

A Yes. He asked me to take everything out of my pocket and he patted me down.

Q Do you know where the drugs were at the time?

A They was in the car under the seat.

Q And what happened after that?

A Then we left there and to the best I can recall, we went to the judge's house.

Q What happened there, if you recall?

A I stayed in the car and Alvin Gristmacher went inside. I can't recall how long he stayed and he came back out and we drove to Woodlawn and Dupont.

Q Did you receive any money from Sergeant Gristmacher?
A Yes. Before I got out of the car, he gave me $15.
Q And what happened at Woodlawn and Dupont?
A The plainclothes detective got out of the car and we proceeded down Dupont to Woodlawn and from Woodlawn down to Jefferson to the book store.
Q Did you do anything with relation to drugs which you earlier mentioned?
A In the meantime, while he was driving to that location, I took the drugs and put them back in my pocket.
Q All right. What happened at the store, if anything?
A I went in the store and I seen Martin standing about middleways of the store behind the counter and I greeted him as "What's happening", and he said something like, "Nothing to it", and then I approached him and we talked for a while and in the meantime, while I was talking to him, I indicated that I wanted, you know, to see him personally and we asked the guy to leave, the plainclothes detective.
Q You say you indicated. Do you mean in words?
A No. I can't recall what kind of motion I made to him at the time, but I did make some kind of motion that he understood.
Q And what happened after that?
A And he asked me, he said, "Would you have your friend

leave the store", or something like that, and I said, "Sure", and I walked with the detective outside the store. He stood outside and I went back in and then is when I asked Martin to hold the $15 that I had and he took the money and as I brought my hand back across the counter, I went to my shirt pocket.

Q Had you ever asked Mr. Sostre to keep anything for you before?

A At an earlier date, I was staying with some friends who was also drug addicts and when I was leaving town, I asked him to hold a suit for me and he did.

Q Do you know where the man that you were earlier with, the plainclothesman, do you know where he was standing during the time of this transaction with the $15?

A He was standing outside the book store on the sidewalk.

Q Do you know where you were standing in the store?

A Oh, about middleways of the store.

Q Can you estimate the distance to where the plainclothesman was standing?

A I guess if you step back to the railing, the railing behind you.

THE COURT: In other words, you are indicating --

MR. CHEVIGNY: Thirty-five feet.

THE COURT: That the officer was about from where you are sitting to the railing in

the courtroom, is that it, Mr. Williams?

THE WITNESS: That is correct.

BY MR. CHEVIGNY:

Q Thank you very much, your Honor, that would be, if I may, it looks to be approximately thirty-five feet, your Honor. Twenty-five, I am sorry. What happened after that, after the transaction with the money, what did you do?

A I went out and told, - Oh, after I gave Martin the money he went to the back of the store and I heard him talking to someone who I assumed was Geraldine Robinson at the time and then he came back and we talked for a while and I told him "I will see you later", and he said, "Be good", and I left the store.

Q And where did you go?

A Back to Dupont and Woodlawn to the car that Alvin Gristmacher was in.

Q And did you do anything there?

A I gave Alvin Gristmacher the drugs that I had in my pocket and he asked me to initial them and I did.

Q Did you testify before a Grand Jury concerning Martin Sostre, if you recall?

A I remember vaguely.

Q And do you remember testifying at a trial concerning Martin Sostre?

A I recall that.

Q Now, those charges that were pending against you at the time that you wrote to the Buffalo Narcotics Division, can you tell the Court what happened to those charges, if you know?

A I can't say exactly that I know, but I was never taken to court on the charge until after the Martin Sostre case was finished.

Q And what happened at the time you went to court? What happened to you physically at the time you went to court?

A I was given probation.

Q Did you walk out?

A Yes. Not exactly, no.

Q Explain it then.

A Because I had another charge on me and I believe it was from Amherst and after I got probation from that Court I was taken directly to Amherst and I think I was released in the custody of the lawyer that represented me at the time and at a later date, I can't recall what more happened in that case, but I didn't get anymore time out of it though.

Q Now, did you ever reveal the story that you have told here today in substance before today? I will withdraw that question. It isn't properly put. Insofar as your testimony showed at the Sostre trial that you had bought drugs from Martin Sostre, was that testimony false?

A. It was.
Q. Is your testimony here today true?
A. It is.
Q. Now, do you recall when you first revealed your present story in substance, in the main; do you recall when you first told someone about the facts?
A. What you mean, to a lawyer?
Q. No, not to a lawyer. Well, to someone other than a lawyer?
A. Yes. I was the member of a group called TUUMEST.
Q. Can you spell that for the court reporter?
A. Yes. T-U-U-M-E-S-T.
Q. And where is that located?
A. Venice, California.
Q. And what kind of a group is it, or was it?
A. A therapeudic group for rehabilitation of drug addicts.
Q. And when were you in that group, Mr. Williams?
A. About a year and a half, about '71; from '70 to '71.
Q. And did something happen in TUUMEST with regard to these facts?
A. Yes.
Q. What happened.
A. Well, one night I just told everything that I knew about it.
Q. And what happened after that?

A. Well, nobody really believed me for the reason, I don't know, but I recall a few days earlier I was in a book store and I recall seeing a story about this Sostre case so I went back to the book store and bought the book and came back and gave it to the coordinator and he read it, seeing my name was mentioned and he asked me, "Well, what you want to do about it", and I told him I would like to straighten it out and he wrote to some judge. I think Judge Motley, something like that.

Q. Motley?

A. Motley, yes, and then a few days, maybe a few weeks later, I don't know, someone came from New York, an attorney, a lady, and she asked me, - I think I knew she was coming beforehand, and she asked me would I be willing to make an affidavit and I told her I would, and as a matter of fact, I had already written it out. She copied it and asked me a few questions and I didn't hear anymore about it until Mr. Haywood Burns came to the detention camp, I think in April.

Q. April of this year?

A. Yes.

MR. CHEVIGNY: No further questions, your Honor. Thank you very much. Thank you Mr. Williams.

CROSS EXAMINATION BY MR. CREAM:

Q Mr. Williams, when was it that you discussed what you say to be the true facts in this case at TUUMEST?

A I don't understand your question.

THE COURT: Mr. Williams, can you just sit back, please. In other words, if you get too close to that microphone it buzzes.

BY MR. CREAM:

Q All right. I will rephrase it for you, Mr. Williams.

A When was the first time, - I believe you testified it was at a meeting of an organization called TUUMEST.

A That's correct.

Q That you revealed your present story, when did that occur?

A I think it was in '71.

Q 1971?

A I'm not sure, but it could be.

Q And that was the first time that you revealed that you had lied on the stand prior to that?

A Yes.

Q To anybody?

A To anybody.

Q Police officers?

A To anyone.

Q To anyone; that includes police officers and district

A That's correct.

MR. CREAM: I have no further questions at this time, your Honor. I would like to reserve the right to further cross examination should be become necessary.

THE COURT: Mr. Cream, Mr. Williams is here.

MR. CREAM: I mean today, your Honor. I don't mean tomorrow or next week. I mean during the course of the proceedings.

THE COURT: We are not going to have him brought back again.

MR. CREAM: I understand.

THE COURT: He is here now. Very well. Nothing else, Mr. Williams. Mr. Chevigny, do you want a minute or two to determine what next, or are you ready to proceed?

MR. CHEVIGNY: I am going to call Mr. Sostre next, but I would like a second to speak to him.

THE COURT: Mr. Chevigny - -

MR. CHEVIGNY: I beg your pardon?

THE COURT: If you want to break for a few minutes, I would be glad to break if you want to do that.

MR. CHEVIGNY: It really isn't necessary.

* * * * * * * *

MARTIN SOSTRE (Clinton Prison, New York State), the petitioner herein, called as a witness in his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHEVIGNY:

Q Mr. Sostre, you state you are now incarcerated in Clinton Prison, is that correct?

A Yes, sir, in the box, in solitary confinement.

Q Where were you convicted?

A I was convicted in Buffalo, right here.

Q When was that?

A That was in 1968, around March.

Q And what were you convicted of, if you recall?

A I was convicted of a sale of narcotics, assault on one of the police officers who raided the book store and possession of narcotics and a thirty-day contempt of Court.

Q And can you tell, if you know, the court, your total sentence?

A My total sentence is thirty to forty-one years and thirty days, which is, the thirty days is consecutive to the forty-one years.

Q Before whom were you tried?

A I was tried before Frederick Marshall, Judge Frederick

Marshall.

Q What court was that, if you recall.

A That was County Court.

Q Were you present at the trial?

A Yes, I was.

Q Did you have counsel at the trial?

A I was my own counsel. I had counsel in the beginning, but the money run out and that was Fahringer and Company. I had given them a retainer, but the money ran out and I was forced to defend myself.

Q So you had no counsel at the trial.

A I had no counsel at the trial.

Q Did you examine any witnesses at the trial?

A No, I didn't.

Q Did you hear Arto Williams testify at your trial?

A Yes, I did.

Q And did you examine him?

A I didn't examine any of the witnesses.

Q And the same is true of Louis Steverson, John Wilcox and other state witnesses, is that so?

A That's so.

Q Now, I direct your attention to July of 1967. Did you, - during July, 1967, did you run a store at the address 1412 Jefferson Avenue in the City of Buffalo?

A I did.

Q And for how long had you been running that store at the time?

A I had been running that store since, I think it was January, '65.

Q And what was it called?

A It was called the Afro-Asian Book Store.

Q What business was it, could you describe the business?

A Yes. It was a book store. I used to sell, specialized, - it wasn't an Ulbrich's. It was specializing in third world literature and I had a record counter. I had African carvings, African prints, African earrings; pamphlets, radical newspapers, black history and it was more or less like, also like a reading room, which I had several lounge chairs where you actually didn't have to buy a book. You could come in and sit down and take a book off the shelf, read it and go through it and put it back and walk out. It was more or less like a community center type of book store.

Q Can you describe its appearance in July, 1967? That is from the outside, the appearance?

A Well, in July, 1967, the Fire Department had broken the windows and they were boarded up with plywood because there was a fire next door at the Woodlawn Tavern and although the fire was, - there was a stairwell between the book store and the Woodlawn Tavern and there was no

fire at all in the book store, for some reason or other, they broke the windows and I had to board them up and the door. It didn't have any glass. It was boarded up.

Q And were those big display windows plate glass?

A Big display windows.

Q And it was a plate glass door too?

A And there was a plate glass door originally, but they were boarded up with plywood.

Q Did you know Arto Williams at that time in July, 1967?

A Yes, I did.

Q Will you please describe the circumstances under which you knew him?

A Well, as I stated, next door was a tavern called the Woodlawn Tavern which was a hangout for well, in addition to addicts, other people, hustlers or whatnot, but a lot of addicts used to hang out there because dope peddlers used to hang out there and this was next to the book store and Arto Williams, I seen him there and he come in sometimes waiting for, I guess, the guy he was going to buy dope from and he would use the phone. I had a public phone and they would usually use the toilet and I think he bought a couple of books sometimes, but most of the dealings I had with him I seen him mostly hang out in front of the Woodlawn Tavern which was next door.

Q Were you ever asked before July 14, 1967, were you ever

asked by Arto Williams to keep anything for him?

A. Well, at one time several months prior, he came in with a suit and told me that he had to go out of town and he was afraid, he didn't have anybody to keep it for him and he was afraid somebody would steal it, would I keep it for him, and I said, "Okay", and it was on a hanger. I hanged it at the back of the store until he came back a couple of days later and picked it up.

Q. Were you ever asked by any other people in that district to keep things for them?

A. Yes, quite often. People used to leave packages there sometimes to give to another person or a lot of times they would leave umbrellas. In fact, a couple of times some women left their kids, small kids, two or three year old kids for me to mind until they did some shopping or they went other places. Like I say, this was no Ulbrich's book store. This was, - I was trying to make a community center out of it and seeing there was no services in the ghetto, like they have downtown, I tried to supply. In fact, I was the only black book store out of 100,000 black people, it was the only black book store and so it went beyond just being a book store. Like I say, people used to sit down and listen to records or read books or magazines, use the toilet. A lot of people didn't want to use the toilet in the tavern because of the criminal type element

and they would ask to use the bathroom and ask for their kids or bring in babies and stuff to use the bathroom or they want to get change for the parking meter and some of them even borrow money and give it back. There was a whole range of services that they would come in and leave things there and pick up things left for them by other people.

Q Did you see Arto Williams on July 14, 1967?

A Yes, I did.

Q Did you know a Geraldine Robinson at that time?

A Yes, I did.

Q Was she present in the store at the time you saw Arto Williams?

A Yes. Geraldine Robinson come in a few minutes before Arto.

Q Will you describe what happened when Williams came in the store; who he was with, if anyone, and what was said and what happened.

A Well, Arto Williams came in with another individual I didn't know; came in and gave me the greeting, no name, but everyone used at that time, "What's happening", which was a greeting prevalent at that time. I answered him and he came to the counter and he says "Look, I want to rap with you", and he did one of these things.

Q Describe for the Court what you are doing, for the record?

A. Well, when he came to the counter, he said "I want to rap with you a minute", and he cut his eyes like this because the other guy was on the other side and he couldn't see him.

Q. Indicating pointing with his thumb across - -

A. Pointing with his thumb at the other individual.

Q. And he cocked his head, did he?

A. His eyes.

Q. I see. In other words, he is saying, you know, he didn't want to talk to me, you know, something. I didn't know what was happening because he was an addict and addicts, they go through so many changes. They hustle money and feed each other and they sell each other phony stuff and they steal and they do everything because of that handicap that they have which drives them to desperation, so I figured he was up to something but it wasn't my business.

Q. So what happened?

A. So when he did that, I told him I says, "Okay, pardon me, I want to speak to Arto in private". In fact, I was going to take Arto to the back of the store but this individual, he probably thought I meant out of the store and he said to Arto "I will wait outside", and walked out the store, so he walked out the store and Arto says "Look, man, I got to go downtown to take care of some business. I want you to hold this money for me because I don't want to

blow it", you know, so I says, "Okay", I said, "But you won't be able to get it tonight, because I am getting ready to close", which I was. It was getting near 12:00 and it was on a Friday night. I usually stay open late but that night it was kind of slow and the weather was cold so he said, "That's all right, I'll pick it up", and so I said, "Okay", and so shortly after, we made some small talk and then he walked out the store.

Q Now, when he gave you the money, did you do anything with it, if you recall?

A I think I put it in the register and gave part of it to Geraldine because Geraldine had come in to the store in order to get some money to operate the other store that was on High Street, so for the week-end like on a Saturday, that is the big day and you have to have not only enough money, but enough records and she usually used to come to the store on Jefferson, which I had two stores. I had just opened up the other small store where Geraldine worked and I worked the one on Jefferson Avenue and she had come to get the money and maybe records, the stock books, the records in my store, or the books. I had enough of one stock, otherwise, I would have to buy enough records for the ones that were selling for the next day, so I gave her, I think it was twenty, twenty-five dollars in ones; a lot of times you run out of

change and I gave her ones, $1 bills. Sometimes, several rolls of quarters and dimes to make change for the customers and I gave her some money from the register, including, I guess, part of that money which I put in the register and that was the purpose for her being there.

Q Do you recall whether you had any physical contact with Arto Williams apart from reaching out to take the money from him?

A I probably gave him some skin at that time. That is an abbreviated handshake, you know, when you hold out your hand and you just tap it instead of giving a full handshake.

Q Did there come a time that night when you were arrested?

A Yes, there was.

Q Or the next morning?

A Yes, the next morning.

Q And do you recall very briefly how that occurred, in a few words or a couple of sentences?

A Well, I was getting ready to close and I was in the back washing my hands. I had already cleaned up the register, put the money in my pocket so that in case of burglarizing they wouldn't get the money and I was in the back washing my hands and all of a sudden I heard a stampede of people coming in and I looked and I heard Geraldine holler "Stick- up", and I saw one of the individuals grab her

and hit her and knock her down in the chair and so when I saw that I ran forward to meet them and I ran into Gristmacher who was the first one coming in on the raid. I didn't know it was Gristmacher at that time. Later on I find outhis name, so we clashed and we struggled and the other officers came to his rescue and started black-jacking me and finally, they subdued me.

MR. CREAM: I object, your Honor. We are getting very far afield from the issues before this Court.

THE COURT: I will overrule it. I will hear it. Mr. Chevigny said "briefly" and I think Mr. Sostre is giving me highpoints as he sees them. Go ahead, Mr. Chevigny.

THE WITNESS: So finally, they subdued me and, well, I want to be brief, so that is it.

BY MR. CHEVIGNY:

Q Okay. Before your arrest in this case, had you ever been convicted of a crime?

A Yes, I have.

Q And had you previously done a long sentence?

A Yes. I finished a 12-year sentence in 1964.

Q And what was that for?

A That was for possession of drugs.

Q What drugs?

A What type of drugs?

Q Yes.

A Heroin.

Q And do you have other convictions on your record as well?

A Yes. I have been convicted for marijuana. I think I have a jostling conviction. I got sixty days in New York City. I have a dishonorable discharge back in '42, which we got in a fight between two companies in town, soldiers. I have a Federal, - well, that's the same one. I have about six prior convictions, I believe, six or seven.

Q Did you ever sell drugs to Arto Williams?

A I never sold drugs to Arto Williams or anybody else in Buffalo.

MR. CHEVIGNY: All right. That is all.

MR. CREAM: No cross, your Honor.

THE COURT: No questions?

MR. CREAM: No cross, your Honor. I would like to, if I may, again reserve the right to call Mr. Sostre back for cross examination in today's proceedings should it become necessary. At this point, I have no questions for Mr. Sostre.

THE COURT: Mr. Chevigny, do you object to this procedure that Mr. Cream is following here?

MR. CHEVIGNY: Well, not if it is to be done within

the confines of this hearing. I wouldn't want to drag it out. If there is some really valid reason that a witness can be recalled in the interest of justice, I don't really object.

THE COURT: I suppose, Mr. Cream, it is on your theory of the case that Mr. Williams testified that the first time that he ever told anyone that his testimony was untrue was when he was in California and was meeting with the group in California and that he never before that time ever told any police officers, district attorneys or anyone else, so that there is a line of cases which indicates that if the testimony is false, but the prosecutor and the police do not know about it, that then it is not sufficient to set aside the verdict. Is that generally your theory?

MR. CREAM: Yes, your Honor. You are anticipating my theory.

THE COURT: All right. Mr. Sostre, thank you.

THE WITNESS: Thank you, sir.

MR. CHEVIGNY: At this time, the petitioner will call Joseph Sucher. Correction, Joel

Sucher.

* * * * * * * * * * *

J O E L S U C H E R (58 Douglas Street, Brooklyn, New York), a witness called by and in behalf of the petitioner, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CHEVIGNY:

Q. Mr. Sucher, please relax and sit back because the mike picks up your voice even if you are sitting back. Mr. Sucher, what is your occupation?

A. I am an independent film maker.

THE COURT: Excuse me, independent - -

THE WITNESS: Film maker.

BY MR. CHEVIGNY:

Q. How long have you been engaged in that occupation?

A. Four years.

Q. And have you ever made films?

A. Yes, I have.

Q. And for whom have you worked?

A. I have worked for National Educational Television, French Broadcasting, German TV, and I am currently employed by the Pacific Street Film & Editing Company.

Q. Is that in New York City?

A. Yes, it is.

Q Mr. Sucher, were you ever at the address 1413 Jefferson Street?

A Yes, I was.

Q In Buffalo?

A Yes.

Q And when were you there?

A I was there yesterday afternoon.

Q And did you go to the second floor?

A I did.

Q Did you have camera equipment with you?

A I did.

Q Could you describe to the Court what it was?

A I had a 16 millimeter Akor motion picture camera with a 16 millimeter - -

THE COURT: Mr. Sucher, it is hard to hear in this courtroom. If you would please speak a little slower, I would appreciate it.

THE WITNESS: Yes. I had an Akor motion picture camera, which is a 16 millimeter motion picture camera, with a 12-120 millimeter Angenieux zoom lense on it.

BY MR. CHEVIGNY:

Q What is a zoom lense?

A It is a lense you can vary from a wide angle to a telephoto perspective simply by turning the lever.

Q What does it do in common parlance, what does that telephoto lense do to the image that you see through the camera?

A. It can bring you closer.

Q And how close, or how many times can this telephoto lense that you were using magnify an object?

A. A full telephoto position which is approximately 120 millimeter there is a ten times magnification.

Q Now, did you have an occasion to look across the street, - withdrawn. When you look through the camera, can you see through the telephoto lense?

A. Yes, I can.

Q Did you have occasion to look across the street from 1413 Jefferson Street to 1412 Jefferson Street?

A. Yes, I did.

Q And would you describe what you did or what you observed through the - -

MR. CREAM: If your Honor please - -

BY MR. CHEVIGNY:

Q Telephoto lense.

MR. CREAM: At this point I am going to object to the relevancy of the testimony. There has been no foundation laid for it. There is no testimony from the witness that he made this examination of the premises on

the day that the alleged incident occurred or even within a reasonable period of time thereafter. I think there can be no inferences drawn from what transpired some six or seven years thereafter.

THE COURT: Of course, Mr. Cream, I think the only way to judge that is to listen to the testimony. Whether the structures are the same now as they were then, whether there has been changes in the location of the buildings or, let us say, the foremat or the fronts of the stores, I don't know, and I think the only way you can judge that is to listen to the testimony.

MR. CREAM: If your Honor please, that is the point that I am making here, that without that foundation prior to this witness's testimony no inference can be drawn and I think it is improper to go forward with it and I object.

THE COURT: All right.

BY MR. CHEVIGNY:

Q I will try to clarify the points raised. Can you describe,- withdrawn. Do you know how far it is from the base of 1413 Jefferson Street across the street to 1412 Jefferson

Street?

A It is approximately sixty feet.

Q How did you determine that?

A By using the distance scale on the zoom lense.

Q And can you describe the front entrance of 1412 Jefferson Street?

A It is a doorway. It is a bit recessed from the street. There are windows on either side.

Q And - -

THE COURT: Excuse me, Mr. Sucher, is that occupied now?

THE WITNESS: Yes, it is.

THE COURT: Is there a store in there or what?

THE WITNESS: Yes, sir. There is an optician there.

BY MR. CHEVIGNY:

Q Are the windows boarded up with plywood?

A No, not now.

Q And the door is not boarded up with plywood, is that correct?

A No, it is not.

Q All right. Now, did you have occasion to look through the telephoto lense through the door of the store?

A Yes, I did.

Q And did you do that in the daytime or the night?

A. I did it during the daytime.

Q. And what did you see?

A. I observed a doorway at full telephoto position, 120 millimeter.

Q. And how close does that bring you? The equivalent of how close does that bring you?

A. Approximately six feet.

Q. Six feet?

A. Yes.

Q. Go ahead.

A. I observed several people entering and leaving the premises. The door would open, somebody would walk in. The door would close behind them. I could see a vague image which would disappear after they had gone in a foot or two inside the store.

Q. And was the store lighted at the time?

A. I think they were fluorescent lights.

Q. And when they disappeared, - you say they disappeared out of your line of vision, is that correct?

A. Because of the angle of the window and the glass in the door, they would disappear.

Q. Can you estimate for the Court how far inside the store you could see by means of that method?

A. A foot, two feet.

Q. And did you make a film at that time of what you saw?

A. Yes, I did.

Q. Do you have that film developed?

A. Not yet.

Q. All right. Thank you. Through the doorway, looking through the doorway with the telephoto lense could you see what was going on in the left side of the store?

A. No, I could not.

MR. CHEVIGNY: That is all. Thank you very much, Mr. Sucher.

CROSS EXAMINATION BY MR. CREAM:

Q. Where were you when you made that observation, please?

A. I was on the second floor of a house opposite the optician's and I forget the address.

Q. You forget the address?

A. I forgot the address, yes.

Q. Had you been at that location earlier?

A. No, I had not.

Q. That was the first time you had ever been there?

A. Yes, sir.

Q. So you have no idea what condition that area was in in 1968, have you?

A. No, sir.

MR. CREAM: I have no further questions.

MR. NOTARO: May I have the permission of the

Court to ask one or two questions, or to consult with Mr. Cream before he finishes his cross examination?

THE COURT: Do you object to Mr. Notaro asking questions?

MR. CHEVIGNY: I don't object to any lawyer, but there was a representation that he might be a witness, and if he is going to be a witness, I would ask, - that's all.

THE COURT: He will consult with Mr. Cream.

BY MR. CREAM:

Q Can you pinpoint for us a little bit more precisely exactly where you were when you took that film?

A The address is 1413.

Q All right.

A I was on the second floor of 1413 at a Dr. Singer, who is a dentist. His window is almost, almost opposite the optician's at 1412, maybe a bit to the right side.

Q How many windows are in that office?

A I saw two.

Q I beg your pardon?

A I saw two.

Q There are two windows. Could there have been anymore windows? "Yes" or "No", could there have been more windows?

A. I suppose so.

Q. I see, and from which window did you make the observations?

A. From one of the windows.

Q. Which of the two?

A. Do you want me to describe my perspective?

Q. Yes, I do.

A. If I was looking down at the optician, I would be almost opposite. I would say maybe a bit to the right.

Q. Almost opposite the optician's?

A. Yes. Maybe a bit more to the right.

Q. To your right or to the right of the optician?

A. The right of the optician.

Q. The two windows you describe, are they one next to the other?

A. Yes, they are.

Q. Were you shooting from the right window or from the left window?

A. Well, from what perspective? From my perspective looking down?

Q. Yes.

A. I was shooting from the right one.

Q. I see. Did you shoot from the left one at all?

A. No, I didn't.

Q. And you didn't examine the offices to determine whether there were any other windows you might have shot from?

A. The only windows that I saw were the two windows when I walked in.

Q. So you made one film from one location and that would be the right window in the optometrist's office?

A. The optometrist's office, - the dentist's office.

THE COURT: The dentist's office.

BY MR. CREAM:

Q. The dentist's office?

A. You are right, yes.

Q. Okay.

THE COURT: Mr. Sucher, were there other dentists? Some dentists have one room offices. Others have rooms with a number of chairs. Was Dr. Singer's, - did he have a series of rooms or was it just one room that you could observe?

THE WITNESS: No, sir. There were two rooms and as I walked in the office, there was a waiting room which was the left-hand window and then there was his office, his dental office which was in another room and that is the room I film from.

THE COURT: I see, and there was just one window in that office?

THE WITNESS: Yes, sir.

THE COURT: Did he have any other rooms with chairs down the hall, do you know?

THE WITNESS: Well, apart from the waiting room, I didn't see any other rooms.

THE COURT: Any other questions?

MR. CHEVIGNY: No, your Honor.

MR. CREAM: No, your Honor.

THE COURT: Thank you, Mr. Sucher. We will now be in recess for about ten minutes. Spectators, stay in your places, please, until the witnesses and Mr. Sostre leave. We will be back in about ten minutes.

MR. CHEVIGNY: Your Honor, the petitioner is ready to rest.

THE COURT: If we are going to do that then, - you are going to rest now?

MR. CHEVIGNY: Yes, your Honor.

THE COURT: We will take a break anyway and do you have a motion or something?

MR. CREAM: I have motions.

THE COURT: We will hear your motions when we return. Stay in your places, please, until Mr. Sostre and the marshals walk out. Ladies and gentlemen, when you return, the spectators, - Are there many

waiting, Mr. Hassett?

DEPUTY UNITED STATES MARSHAL HASSETT: Somebody told me there was about thirty or forty downstairs.

THE COURT: They are all downstairs, so that you folks, if you desire to come back, you may. If you leave the floor, however, that means that you will have to get in line again. We will have to take it up in that fashion. We will be in recess.

(Recess taken at 11:45 a.m.)

* * * * * * * * * *

PROCEEDINGS: After recess, 12:05 p.m.

APPEARANCES: As before noted.

THE COURT: Mr. Cream.

MR. CREAM: May it please the Court, your Honor, if the testimony of all of the witnesses for the petitioner in this case is construed as being correct, if all of the allegations made by petitioner and by his witnesses, both in writing and in oral testimony before this Court are construed to be true, they still fall short of alleging any Constitutional deprivation of due process which would be actionable in the Federal District Court under this writ of habeas corpus. The cases are clear that unless the introduction of perjured testimony at a State Court proceeding can be shown to have been done either with knowledge of the prosecuting officials or the prosecuting officials became aware that the testimony was false and failed to take remedial action, that this does not constitute a deprivation of due process of law under the Federal habeas corpus statute.

There is no allegation made by petitioner and, in fact, petitioner's main witness, Arto Williams, admits that he did not make known to any authority his allegation that his testimony at the trial of Martin Sostre was perjurous. In fact, from his own testimony it becomes quite apparent he took considerable pains to, if his story is to be presumed true, keep from the authorities any knowledge of what he was, in fact, doing. He testified that he hid drugs in the car and concealed the same from anybody. He testified that he was searched prior to his entry into the store and that the drugs were immediately taken by Gristmacher and initialed in accordance with normal procedures. In fact, his entire testimony on the whole indicates that the prosecuting authorities and the Buffalo Police officers, New York State Troopers who were involved took every precaution to insure that a proper foundation was laid, that the evidence obtained was obtained with probable cause and that no violation of petitioner's Constitutional rights occurred. For these

reasons, your Honor, we move that the Court dismiss the instant petition and vacate the writ previously issued on the grounds of failure to state a cause of action under the Federal Habeas Corpus Statute.

THE COURT: Mr. Cream, you mentioned some cases. Are there some cases that you would like to --

MR. CREAM: Yes, your Honor. I would cite the Court to three cases, Purkhiser vs. Wainwright. The main opinion is reported at 338 Federal Supplement 369, affirmed by the Court of Appeals in the Fifth Circuit, as I recall, at 455 F.2, 506. A more recent case is Oyler vs. Taylor, reported at 338 F.2, 260, and the case which I believe serves the backbone for the line of decisions which have followed it is Cobb vs. Hunter, reported at 167 F.2, 888, with certiorari having been denied by the Supreme Court at 335 US 832.

THE COURT: 164?

MR. CREAM: Your Honor, the Federal Supplement is 167 F.2, 888, cert denied at 335 US, at 832. If petitioner desires to shift his theory of action to that of newly-

discovered evidence, that likewise is not sufficient for this court to exercise its jurisdiction and I cite to your Honor Townsend Vs. Sain, reported at 372 US 293.

THE COURT: That is one of the grandaddy cases, isn't it?

MR. CREAM: Yes, your Honor. These line of cases are well founded.

THE COURT: Mr. Chevigny, what do you want to say?

MR. CHEVIGNY: Well, very briefly we think that the question isn't free from doubt and this being a case of great importance we would like to submit a brief and I don't want to rest entirely on an oral with regard to it and I beg leave of the Court to submit a brief but I would like to say two things very briefly, with regard to the federal law, it is our understanding that the Second Circuit has tended to follow a balance between the materiality or importance of the testimony and the involvement of the prosecution in the matter. There could be no more material testimony than this and there is involvement of the prosecution in the sense that the witness

Williams testified here and he testified in Sostre's trial and also in Geraldine Robinson's trial that he was employed by the Buffalo Police Department; he was an agent of the Buffalo Police Department. He was not a volunteer. We think that the balance must come down in favor of the granting of the writ. In support of that we would cite Kyle against United States, 297 F.2, 507.

THE COURT: 290?

MR. CHEVIGNY: 297 F.2, 507, and United States ex rel Hill vs. Deegan, 268 F.Supp. 580. That was decided in the Southern District by Judge Frankel, and that test is discussed there. The State cases which discuss the same issue of the necessity of knowledge of the prosecution, to our way of thinking, and eliminating precedent is People against Robertson, 12 N.Y.2d, 355, in which there was no knowledge by the prosecutor, - that is the lawyer who was the prosecutor, but there was knowledge on the part, - but a policeman, - that is an agent of the Police Department had failed

to tell the truth there and the Court of Appeals held that there was grounds for issuing a coram nobis in that case.

THE COURT: In the Robertson case, do you have the supplement citation?

MR. CHEVIGNY: 239 N.Y.Supp.2d, 673.

THE COURT: 329?

MR. CHEVIGNY: 239, Supp.2d, 673. We would like to submit a brief in support of our position, your Honor.

THE COURT: I think the best thing to do is let us take a break. I will read the cases and then let us return at 2:00 o'clock. I believe, Mr. Cream, that the best course to follow, - Mr. Williams has come certainly some distance. Mr. Sostre is here also with a little difficulty and I think that what I will do is reserve decision on your motion and assume that there is enough here that we should go ahead and have cross examination so we have a record, and also if appropriate I may deny your motion and you should have witnesses ready if you feel it is appropriate.

MR. CREAM: Certainly, your Honor.

THE COURT: We will be in recess then until 2:00 p.m. Again, spectators, remain in your places until Mr. Sostre walks out and when you return this afternoon you will have to again, -- there is no reserving of seats here, - you will have to go through the same procedure you followed when you came to the Court this morning. First come, first served.

MR. CREAM: If your Honor please, before we adjourn I would like to put on the record that in the return made in court this morning I referred to the transcript of proceedings as an exhibit annexed to that return. I still have that transcript and I intend to utilize it during the proceedings should there be anything further, I again state for the record the transcript is now a part of the proceedings.

THE COURT: Mr. Cream, you have also tried to track down that other film that we talked about at the very beginning.

MR. CREAM: Yes, your Honor.

THE COURT: Anything else, Mr. Chevigny, before we break?

MR. CHEVIGNY: No, your Honor.

THE COURT: All right. We will be in recess.

(Recess taken at 12:15 p.m.)

* * * * * * * * *

PROCEEDINGS: After recess, 2:10 p.m.

APPEARANCES: As before noted.

A R T O W I L L I A M S, a Witness called by and in behalf of the Petitioner, having been previously duly sworn, resumed the witness stand and testified further as follows:

CROSS EXAMINATION BY MR. CREAM:

THE COURT: Mr. Cream, I will defer ruling on your motion and without deciding it it seems to me that you should go ahead for the moment and assume that there is validity to the argument here of Mr. Chevigny, so now we have Mr. Williams back on the stand for cross examination.

MR. CREAM: Thank you, your Honor. Before I proceed, during the lunch recess I contacted Mr. Robert Horn, who is the staff director --

THE COURT: Mr. Hoffarth, is that machine on? I think it would be better if we turned it off.

MR. CREAM: Who is the staff director of what is now the Committee on Internal Security, formerly the House Committee on Unamerican

Activities. I asked his assistance in obtaining the film in question here and he assured me that he would do his best, or I should say his secretary assured me that they would do their best to locate the film. I also contacted the office of Representative Richard Ichord, who was the then chairman of the Cone Committee, and likewise enlisted their assistance in securing the film. I left with Mr. Horn's secretary the court's telephone number in the event they discover the film during this proceeding.

THE COURT: Thank you, Mr. Cream.

MR. CREAM: I can do no further.

THE COURT: All right.

BY MR. CREAM:

Q. Mr. Williams, you said that subsequent to the Sostre trial there was some disposition made of a criminal charge against you in Buffalo in the Erie County Court?

A. That's correct.

Q. What was that disposition, Mr. Williams?

A. Probation.

Q. Probation?

A. Yes.

Q. I see. You were convicted of the crime?
A. Yes.
Q. And you were sentenced to a term of probation?
A. Yes.
Q. I see. Do you recall, Mr. Williams, what the terms of that probation was?
A. No, I don't.
Q. To what jurisdiction were you released on probation, Mr. Williams?
A. New York, Erie County, I guess.
Q. Erie County, but you subsequently went to California, is that correct?
A. Yes.
Q. Was that with the approval of the probation authorities?
A. Yes.
Q. I see. Did you, in fact, request to be transferred to California?
A. No.
Q. You did not?
A. No.
Q. I see. Did your parents?
A. No.
Q. You mean it was the idea of New York State to transfer you to California?
A. I just went.

Q. I beg your pardon?

A. I just went.

Q. You just went, but you told me you weren't with permission.

A. I didn't say I went with permission. If I did, I misunderstood your question.

Q. That was my question, Mr. Williams.

A. No, I did not go with anyone's permission.

Q. So you fled probation and --

THE COURT: Mr. Williams, it is difficult to hear in this courtroom. I would appreciate very much if you would take your time, speak slowly and keep your voice up.

BY MR. CREAM:

Q. So you fled the jurisdiction of the Erie County Court and moved to California, is that your testimony?

MR. CHEVIGNY: I object to the form of the question, your Honor. It seems a conclusion. Fleeing the jurisdiction is a legal conclusion, your Honor.

THE COURT: Overruled, it doesn't have to be. Mr. Williams, if you cannot answer, you say so. Go ahead.

THE WITNESS: I don't feel that I fled.

BY MR. CREAM:

Q. But you left?

A. Yes.

Q. You left without permission, "Yes" or "No".

A. No.

Q. No?

A. No.

Q. Then you had permission to go?

A. I didn't exactly have permission but I wrote and told them where I was at.

Q. You wrote and told who where you were at?

A. The lawyer.

Q. What lawyer?

A. John B. Walsh.

Q. Was John Walsh your parole officer?

A. He was my attorney.

Q. Did you write to anybody in the Probation Department?

A. No.

Q. I see, so you did leave without permission, isn't that right, Mr. Williams?

A. If that's what you want to call it, yes.

Q. Now, Mr. Williams, I want to know what you call it.

A. I just call it left.

Q. All right. Why did you leave, Mr. Williams?

A. I just got tired of Buffalo.

Q. What about Buffalo in particular, Mr. Williams?

A. Well, I thought it wasn't safe for me being here.

Q. Why not?
A. Because of the statements I made in the Sostre case.
Q. I see. Were you being threatened?
A. No.
Q. Well, why didn't you think it was safe?
A. Well, I figured that if someone did what I did I feel they would have something to worry about.
Q. But nobody ever communicated a threat to you, Mr. Williams?
A. No.
Q. Never heard about any threats on the street?
A. No.
Q. Nobody ever said they were going to get you, never heard from anybody that they were going to get you?
A. No.
Q. You just decided that the climate wasn't so good and you better leave, is that your testimony?
A. I didn't say anything about the climate.
Q. I mean the climate of your safety, Mr. Williams.
A. Yes.
Q. So as a matter of fact, you left Buffalo because you feared for your life, is that correct?
A. I guess you would say that.
Q. Now, Mr. Williams, I want to know what you --
A. I didn't exactly fear for my life. I just wanted to be on the safe --

Q. As a matter of fact, Mr. Williams, weren't several threats against your life placed with you?
A. No.
Q. As a matter of fact, weren't your parents likewise threatened?
A. I guess they were.
Q. Oh, they were, all right.
A. I didn't say they was threatened. They was worried.
Q. Worried about what?
A. That they will be threatened with harm because of what I did.
Q. But nobody ever threatened you?
A. No.
Q. Nor your parents?
A. Not that I know of.
Q. Well, as a matter of fact, Mr. Williams, didn't you flee because you were in fact being threatened?
A. No.
Q. Isn't it true that your parents were the source of threats also?
A. You will have to ask them.
Q. All right. Now, Mr. Williams, when you got out to California, what did you do then?
A. As I said, I wrote my lawyer and told him where I was at.
Q. When was this?

A. I guess '69, I guess.
Q. Can you tell me what month it was?
A. Around July.
Q. About July of '69?
A. Yes.
Q. All right. And then what did you do?
A. I got a job.
Q. Doing what?
A. I was working at American Canning Company, packing.
Q. And when did you become associated with this organization to which you refer to as TUUMEST?
A. TUUMEST?
Q. TUUMEST, okay. Excuse me, TUUMEST.
A. About 1970.
Q. About 1970, and how long were you in this organization, Mr. Williams?
A. Eighteen months.
Q. And what did you learn in this organization?
A. Well, mainly the organization was concerned being truthful with yourself and with others.
Q. Were you a narcotics addict at the time?
A. I can't answer that. At the time, - you mean while I was in the program?
Q. Yes, when you joined in 1970 were you addicted to narcotics?

A. Well, I guess you would say yes, after thirty days absence or so.

Q. All right, and what were you learning inthis organization, Mr. Williams?

A. How to be honest with yourself and others.

Q. Yes.

A. And how to accept your own faults and live with them.

Q. Yes. How to correct yourself?

A. True.

Q. How to be a better person; how to live within the eyes of the law?

A. Yes.

Q. Okay, and is it your testimony, Mr. Williams, that this was the influence which prompted you to decide that it was your duty to come back to Buffalo and change your testimony today?

A. Yes.

Q. And can you pinpoint for me exactly or as close as you can what the date was that you decided that this was something that you had to do?

A. I can't pinpoint exactly the date, but I can sort of, like say about approximately when it started bothering me.

Q. All right, approximately when did it start bothering you?

A. Well, I recall reading an article in Ebony magazine about

the case.

Q. When in terms of time, Mr. Williams?

A. In terms of time?

Q. Yes, the month and the year, as closely as you can pinpoint it.

A. About probably '71.

Q. In 1971. Would that be in the early part of the year or the late part of the year?

A. Early part, probably about April.

Q. Around April of '71?

A. Yes.

Q. And at that point did you write the affidavit or the first affidavit which was a part of this application recanting your testimony?

A. Yes.

Q. Okay, and you did that because you felt it was your duty as a law-abiding citizen to do that, is that right?

A. Yes.

Q. Okay. You felt it was your duty to correct the wrongs that you had done, is that right?

A. I would say that.

Q. I see. Now, Mr. Williams, you testified that prior to your coming out here last week you were in custody in California, is that right?

A. Yes.

Q. I see. What were you in custody for?
A. Violation of probation.
Q. And what was the violation of probation, Mr. Williams?
A. Not reporting.
Q. I see, and what were you on probation from?
A. Sale of dangerous drugs.
Q. I beg your pardon?
A. I guess you can call it sale of dangerous drugs, baby aspirin.
Q. Baby aspirin, I see. It is a crime in California to sell baby aspirin?
A. As a drug, yes.
Q. And when were you convicted of this crime, Mr. Williams?
A. In '69 or '70, somewhere around there.
Q. It couldn't have been '71?
A. Conviction or arrest?
Q. Conviction.
A. It could have been. I wouldn't swear on it.
Q. I see. After you decided, though, that it was your duty as a law-abiding citizen to come back to New York, is that right?
MR. CHEVIGNY: I object.
THE WITNESS: No, no.
MR. CHEVIGNY: To the term "law-abiding citizen", your Honor; it is a question that assumes

that he thinks that he is a law-abiding citizen.

THE COURT: I will strike the "law-abiding". Ask the next question, please. I will sustain the objection.

MR. CREAM: Will the reporter read back my last question, please, your Honor.

(Last question read.)

THE COURT: The reason, Mr. Cream, I feel the best way to proceed with the questioning is to ask for facts rather than putting in some kind of descriptive phrases, so why don't you just stay with the information and ask the question.

MR. CREAM: Thank you, your Honor. I was using a phrase which the witness himself had used in his testimony.

THE COURT: All right. Next question, please.

BY MR. CREAM:

Q. Mr. Williams, as a matter of fact, weren't you convicted of the crime for which you were returned to prison as a violator of probation subsequent to your decision to recant your testimony?

A. I don't know all what you are saying right at the present time, but I know that you have the dates wrong.

Q. Well, I have the dates from you, Mr. Williams. Do you want to go back and think about them again?

A. At the time I made that statement I was free.

Q. You were free?

A. I had no, - anything pending over me.

Q. Okay, and then subsequent to your decision you were then arrested, isn't that right?

A. Subsequent to my decision?

Q. After your decision, after your affidavit.

A. Oh, last December, that's when I was arrested.

THE COURT: How many affidavits are there? There are a number of affidavits. Can you refer to particular dates, Mr. Cream?

BY MR. CREAM:

Q. I am referring to the date, your Honor, which the witness testified to as being in April of 1971. I am establishing as a matter of fact that after that affidavit was written he was arrested on felony charges in the State of California.

A. That is incorrect.

Q. What is incorrect?

A. I was not arrested after. It was before, a year before.

Q. All right. Now, Mr. Williams, let's go back to July 14th of 1968. You testified that you met with Sergeant Gristmacher.

THE COURT: Now we are at the trial?

MR. CREAM: July 14th was the date of the sale of the drugs, your Honor.

THE COURT: July 14th?

MR. CREAM: 1968.

THE COURT: All right.

MR. CREAM: '67.

THE COURT: I was wondering. '67.

MR. CREAM: '67. Strike '68, - '67.

THE COURT: 1967, wasn't it?

BY MR. CREAM:

Q. Yes, your Honor. You met with Sergeant Gristmacher, is that right?

A. If it was July, yes.

Q. You don't remember the month?

A. No.

Q. I see. When did you first meet with him that day, Mr. Williams?

A. Do you mean after being released from jail?

Q. Yes.

A. Immediately.

Q. Mr. Williams, I am talking about the day preceding the sale or the purchase of the narcotics from Sostre.

MR. CHEVIGNY: Now I am going to object. That assumes it was the day before and that

there was a sale of drugs.

THE COURT: Rephrase the question.

MR. CREAM: I certainly will.

THE COURT: Keep in mind, Mr. Cream, that the petitioner's position now is that there was in fact no sale, so we don't have a stream of objections here maybe if you will say "alleged sale", or something of that nature, to fix the time.

BY MR. CREAM:

Q. Surely. Mr. Williams, I am talking about the day that came before the evening that you went into Martin Sostre's bookstore.

A. You lost me.

Q. I did, all right. I will try to make it more simple for you, Mr. Williams. You went into Mr. Sostre's bookstore in the evening of July 14, 1967.

A. Yes.

Q. All right. In the day of July 14, 1967 when did you first meet with Sergeant Gristmacher?

A. As soon as I was released on bail.

Q. All right, and what transpired?

A. He gave me some money.

Q. How much money?

A. I can't recall.

Q. You can't recall how much money he gave you?
A. No.
Q. Well, was it $50?
A. No, it wasn't that much, no.
Q. Was it $25?
A. It could have been.
Q. Could it have been $15?
A. It could have been.
Q. Okay. Could it have been less than $15?
A. No.
Q. All right. What did he give you that money for, Mr. Williams?
A. I wasn't interested in what he gave it to me for.
Q. Did you ask him?
A. No.
Q. Did he tell you?
A. No.
Q. He just peeled off fifteen bucks and handed it to you?
A. If you say it was fifteen. I didn't.
Q. He just peeled off some amount of money?
A. Yes, that's correct.
Q. And handed it to you?
A. Right.
Q. And you said nothing to him in response to that?
A. Maybe "Thank you", but I can't recall.

Q. All right. What did you do next?
A. I guess I caught a bus and probably got off at Jefferson and William, - and Ferry.
Q. Jefferson and Ferry?
A. Yes.
Q. All right, and then what?
THE COURT: Just a minute. You left Sergeant Gristmacher. He gave you some money and then as you recall, - maybe you didn't know what it was for, - was there any arrangement made then to see Sergeant Gristmacher later?
THE WITNESS: Yes.
THE COURT: What was said in that respect?
THE WITNESS: He told me to meet him at Winslow and Fillmore at 9:00 o'clock that night.
BY MR. CREAM:
Q. At 9:00 o'clock?
A. That's correct.
Q. And what did you do when you left the office?
A. As I said, I caught a bus and I got off at Jefferson and Ferry.
Q. About what time was that?
A. Could have been anywhere from 2:00 to 3:00, maybe 4:00.
Q. All right, and what did you do when you got off the bus?

A. Started looking for a pusher.

Q. Did you find one?

A. I did.

Q. What time did you find one?

A. Almost immediately.

THE COURT: Excuse me, what time?

THE WITNESS: I said "almost immediately".

THE COURT: All right.

BY MR. CREAM:

Q. So that would have been either 3:00 o'clock or 4:00 o'clock or 5:00 o'clock?

A. Anywhere to fifteen minutes after I got off the bus, I guess you would say.

THE COURT: Mr. Williams, I cannot hear you. Maybe other people can but I cannot, so keep your voice up.

BY MR. CREAM:

Q. Where did you find the pusher, Mr. Williams?

A. On the street.

Q. Where on the street?

A. On Jefferson and Ferry.

Q. Do you remember what the, - what the street address was on Jefferson?

A. What address? I said on the street.

Q. Yes, but the street is made up of houses, Mr. Williams.

A. No, I don't know.
Q. You don't know what the street address was?
A. No.
Q. I see. How much heroin did you buy? Was it heroin ?
A. Yes.
Q. How much heroin did you buy?
A. A bag.
Q. One bag?
A. One bag.
Q. What did you do with it?
A. I shot half of it.
Q. What did you do with the other half?
A. I kept it.
Q. All right, so you had a half bag in your pocket, is that right? Okay. How much did it cost you?
A. Fifteen.
Q. $15. Did you have any of the money left which Gristmacher gave you after you bought that?
A. I had some money left.
Q. Do you recall how much?
A. No.
Q. So you shot up the heroin around 3:00 or 4:00 or 5:00 o'clock, is that right?
A. Somewhere around there.
Q. All right, and then what did you do?

A. I went home to visit my mother.

Q. And then what?

A. My father threw me out of the house.

Q. I beg your pardon?

A. My father threw me out of the house.

Q. Why did he do that?

A. Because I was under the influence.

Q. Okay. What did you do after your father threw you out of the house?

A. I went back down to Woodlawn and Jefferson and hung around down there.

Q. Did you buy any more heroin ?

A. I didn't buy any more but I got down with somebody else.

Q. Pardon me?

A. I say I didn't buy any more but I got down with somebody else.

Q. I don't know what that means, Mr. Williams.

A. I shot some more drugs.

Q. You shot some more drugs?

A. Right.

Q. But you didn't keep any more drugs? What you got you shot, is that right?

A. Yes.

Q. Okay.

A. But I still had that half a bag left.

Q. I am with you.

A. Okay.

Q. Now, what happened after that; you shot some more heroin and then what?

A. Everything is sort of vague after that.

Q. Everything is sort of vague after that?

A. Yes.

Q. Up until what point do things get clear?

A. I recall buying an ice cream cone on Winslow and Fillmore waiting for Gristmacher.

Q. About what time was that?

A. I guess about 8:00. I mean about 9:00.

Q. About 9:00, and how much before that had you shot up that other heroin ?

A. No, I hadn't.

Q. What do you mean, no, you hadn't?

A. I said I hadn't shot it up.

Q. You testified, Mr. Williams, that you met some people on the street and they gave you some more heroin and you shot that up.

THE COURT: Mr. Chevigny, I think it would be best, but we have the witness here.

MR. CHEVIGNY: I am very sorry. I apologize.

THE COURT: We will take time later if you need it. All right, go back, please.

BY MR. CREAM:

Q. Mr. Williams, you testified that you got onto the street after your father threw you out of the house and that you met some friends or acquaintances, they gave you some more heroin and you shot that up?

A. Right.

Q. All right. How much time expired between that event and your meeting with Sergeant Gristmacher?

A. I have no idea.

Q. Was it an hour?

A. I have no idea.

Q. Well, was it two hours, was it ten hours?

A. I said I had no idea.

Q. You were that high?

A. Yes.

Q. Okay. So you met with Sergeant Gristmacher and you don't know how much later that was because you were so high, and then what happened?

A. He took me down to Police Headquarters.

Q. Did he put you in his car?

A. Yes.

Q. All right, and then what happened?

THE COURT: Excuse me, Mr. Cream, before you leave that. Was anyone with Sergeant Gristmacher when he picked you up?

THE WITNESS: No, your Honor.

THE COURT: All right.

BY MR. CREAM:

Q. All right, he picked you up and you went to Buffalo Police Headquarters?

A. Yes.

Q. All right, and then what happened?

A. He got out of the car and left me in the car.

Q. Yes?

A. And he went in and stayed in for about, I guess, fifteen minutes.

Q. By this time now you are able to tell us the space of time that was going on?

A. It might have been more.

Q. It might have been more than fifteen minutes?

A. It could be.

Q. Or it could have been less?

A. It could have been.

Q. All right. You don't really know.

A. No.

Q. All right. What happened next?

A. While he was in the Police Headquarters I took the bag that I had and put the half bag I had left and put it under the seat.

Q. It was a half bag; you are sure of that?

A. No, I wouldn't say I was sure because I didn't measure it. I didn't have anything to measure it with. I wasn't interested in measuring it.

Q. It was less than a full bag, substantially less than a full bag?

A. Less than a full bag.

Q. Okay. You put that under the seat in the car?

A. That's correct .

Q. Sergeant Gristmacher's car?

A. Yes.

Q. All right. What happened next?

THE COURT: Again, Mr. Cream, Williams, were you in the front seat or the rear seat of this car?

THE WITNESS: I was in the front seat.

THE COURT: Was anyone else in the vehicle at the time?

THE WITNESS: No.

THE COURT: Go ahead, Mr. Cream.

BY MR. CREAM:

Q. All right. What happened after you hid the heroine underneath the seat?

A. I sat there and waited until Alvin Gristmacher came back out and he had another police officer with him in plain clothes.

THE COURT: Mr. Williams, can you move back from the microphone just a little bit?

BY MR. CREAM:

Q. He had another police officer with him?

A. Yes.

Q. Did you know the police officer?

A. No.

Q. Why did you hide the half bag of heroine under the seat, Mr. Williams?

A. Why did I hide it?

Q. Yes. Why did you hide it?

A. Well, I promised them I would help them bust Martin Sostre.

Q. What has that got to do with your having some heroine with you?

A. If I am going to buy heroine, I got to produce something.

Q. If you are going to buy it you got to produce something. You mean you were already planning to, as you put it, frame Mr. Sostre, when you were in the car; is that your testimony?

A. Yes.

Q. Well now, Mr. Williams, you testified that you knew Mr. Sostre before that, didn't you?

A. Yes.

Q. I see, and didn't you testify that you knew him from the

bookstore?

A. Yes.

Q. So you decided at that time that you were going to plant some drugs, is that right?

A. Yes.

Q. Okay, so you hid the half bag under the chair, under the seat, and this other policeman came out?

A. Yes.

Q. Did you know him?

A. Alvin Gristmacher and another policeman came out.

Q. Did you know the other policeman?

A. No.

Q. Do you know him now?

A. I guess if I seen him.

Q. Do you know what his name is now?

A. No.

Q. All right. Now, the other policeman and Sergeant Gristmacher got in the car?

A. Yes.

Q. Okay.

A. No.

Q. No?

A. No.

Q. What happened?

A. He asked me to get out of the car and to take everything

out of my pockets.

Q. Did you do that?

A. Yes.

Q. Did he empty your pockets?

A. Did he empty my pockets?

Q. Yes.

A. No.

Q. Did you empty your pockets?

A. Yes.

Q. And this was in front of the other policeman and Sergeant Gristmacher?

A. Yes.

Q. All right. Then you got back into the car?

A. After he patted me down.

Q. Okay. Who got into the car first?

A. Six years ago?

THE COURT: Mr. Williams, you may remember or you may not remember.

THE WITNESS: Right, your Honor.

THE COURT: If you do not remember, just say you do not remember.

THE WITNESS: I don't remember.

BY MR. CREAM:

Q. All right. Once you got into the car, where were you sitting?

A. The back seat.

Q. You were in the back seat?

A. Right.

Q. Okay, and the other two police officers were in the front seat?

A. That's correct.

Q. Okay, and then you drove to Jefferson and Winslow, or Sergeant Gristmacher did?

A. No.

Q. What happened then?

A. To the best of my knowledge he drove to the judge's house.

Q. And then what happened?

A. I think he went in and got a warrant.

Q. I beg your pardon?

A. I say I believe he went in and got a warrant.

Q. Who got the warrant?

A. Alvin Gristmacher.

Q. Did you and the other policeman stay in the car?

A. I can't remember that.

Q. All right. Then what happened?

A. He came back out and then we drove to Woodlawn and DuPont.

Q. And what happened at Woodlawn and DuPont?

A. He gave me $15.

Q. Who gave you $15?

A. Alvin Gristmacher.

Q. Did he tell you those bills were marked?
A. No.
Q. Did you know they were marked?
A. No.
Q. All right. What did he tell you to do then?
A. I assumed they were.
Q. You assumed they were marked?
A. Yes.
Q. All right. What did he tell you to do with the $15?
A. I can't recall whether he told me anything.
Q. He just gave you $15?
A. You know, like I know what the $15 is for. Maybe at the time he told me what to do with it, but at this time I can't recall what he told me to do with it.
Q. All right. Now, at the time that Sergeant Gristmacher gave you the $15 you were still sitting in the back seat and the two policemen were still sitting in the front seat, is that right?
A. I can't recall whether I was out of the car or in the car.
Q. I see, okay. You got out of the car and the other policeman got out of the car, the one you didn't know
A. That's right.
Q. Was he black?
A. Yes.

Q. Okay, and then the two of you went off on foot?
A. Yes.
Q. Where did you go?
A. To the bookstore.
Q. Okay. About what time was this?
A. I don't know.
Q. Was it dark?
A. Yes.
Q. Did you go into the bookstore?
A. Yes.
Q. Both of you go into the bookstore?
A. Yes.
Q. Who was in the bookstore when you went into it?
A. The best I can recall is Martin Sostre.
Q. Anybody else there?
A. I would say no.
Q. Was there a woman there?
A. Well, in order for me to answer the question, I would be getting ahead. Yes, a woman was there but I didn't see the woman.
Q. How do you know she was there if you didn't see her?
A. I heard her voice.
Q. Well, couldn't you see when you went into the store?
A. Yes, I could see.
Q. But you didn't see her there?

A. No, like from the front to the back.
Q. All right. What did you say to Mr. Sostre when you went into the store?
A. I think I greeted him with "What's happening?".
Q. Can you describe, please, Mr. Williams, where the other police officer was standing when you entered the store?
A. At the time we entered the store he entered with me.
Q. I beg your pardon?
A. I say at the time that I entered the store he was walking with me.
Q. Was he right next to you?
A. Behind me.
Q. Behind you. How many feet behind you?
A. I have no idea.
Q. Was he twenty feet behind you?
MR. CHEVIGNY: Your Honor, I am going to object to this. I didn't object before, but when the witness says he has no idea, and then the question "Was it twenty feet".
THE COURT: It is one of the most helpful means of examination I find, Mr. Chevigny, to suggest various answers to the witness. This is cross examination. Overruled.
BY MR. CREAM:
Q. Was it twenty feet?

A. No, I wouldn't say it was twenty feet.
Q. Probably less?
A. Maybe to where he is there.
Q. To where the court reporter is at?
A. Yes.
Q. All right. Mr. Williams, if I stand over here I would be about the same distance from you that the other police officer was?
A. I believe so.
Q. All right. Let the record show that in my best estimate we are talking a distance of some three feet.
THE COURT: Three or four feet.
BY MR. CREAM:
Q. Thank you. I will take it. All right. You said "What's happening" to Mr. Sostre, is that right?
A. Yes.
Q. Did you do anything with your hands?
A. As I recall, I did something with my hands.
Q. And what did you do with your hands?
A. I can't recall.
Q. You recall that you did something with them but you can't recall what it is that you did with them?
A. You know, a motion, probably a sign, you know.
Q. You don't recall?
A. No.

Q. Okay. What did Mr. Sostre say when you came in?

A. He greeted me, spoke to me.

Q. Did he refer to you by name?

A. No. At least I can't recall it.

Q. Okay. After you said "What's happening?", what did you next say?

A. I recall making a motion to him that I wanted to speak with him alone, and I didn't want the --

Q. Why did you make that motion?

A. Why did I make that motion?

Q. Yes. Why did you make that motion?

A. Because I didn't want the police officer in the store.

Q. Why not?

A. If he stands there I couldn't make the buy.

Q. Well, how did you know that?

A. How can I, - you know, like take it from my pocket with him standing right over me.

Q. But if your job was to do it and he wasn't there to see you do it, how were you going to fulfill your job, Mr. Williams?

A. Well, I did do it.

Q. You did do what?

A. Fulfill it.

Q. Did you?

A. Yes.

Q. Or did you buy drugs from him?

A. No.

Q. By the way, Mr. Williams, you said that you now had the drugs in your pocket, is that right?

A. I did.

Q. What pocket did you have it in?

A. Shirt pocket.

Q. Shirt pocket; right or left shirt pocket?

A. I don't know.

Q. All right. Your earlier testimony, Mr. Williams, was that you got in the back seat when the two policemen came in but you had been sitting in the front seat and hid the half bag under the front seat. How did you manage that?

A. I bent down and picked it up.

Q. You bent down and picked it up?

A. Right.

Q. From the back seat up to the front seat?

A. No.

Q. No. As a matter of fact, Mr. Williams, you never hid any drugs under that chair, did you?

MR. CHEVIGNY: Your Honor, I object. The witness has not answered the previous question.

THE COURT: That is correct.

THE WITNESS: What I am trying to explain to you,

like I know what I am going to do and I know how I am going to do it so I put the drugs under the seat where I know I can conveniently get it and lift it, and so when I moved to the back seat I just picked it up as we were driving along.

BY MR. CREAM:

Q. I am sorry, Mr. Williams, but that doesn't do it. You said you were sitting in the front seat of the car and you leaned over and you put the drugs underneath the front seat of the car?

A. That's right.

Q. And now you want the Court to believe that from the back seat of the car without attracting any attention either from Sergeant Gristmacher or from the other police officer that was sitting in that car, you then managed to reach underneath the front seat and get the drugs, is that what you are saying?

A. I guess if I do it the way you say, I wouldn't be.

Q. That is a very smug answer, Mr. Williams.

THE COURT: Just a minute. How did you do it, Mr. Williams?

THE WITNESS: Very simply, your Honor. I put it like about middle way of the seat and all I got to do is like bend down and pick it

up. It is simple. I didn't make a big thing out of it.

THE COURT: All right. Now, of course, as Mr. Cream says, you moved to the rear seat. How did you retrieve the package when you were in the rear seat?

THE WITNESS: I just simply reached under the seat. They had no reason to be suspicious of me.

THE COURT: Go ahead, Mr. Cream.

BY MR. CREAM:

Q. They had no reason to be suspicious of you if you reached down from the back seat and underneath the front seat?

A. Why?

Q. Because that seems to be a rather suspicious thing to do when you are sitting in a car with two police officers.

THE COURT: Mr. Cream, this is getting a little argumentative.

BY MR. CREAM:

Q. My apologies, your Honor. Now, Mr. Williams, you went into the bookstore and you had the other police officer standing about three feet to four feet, was that to your right?

A. All I know, he was behind me.

Q. I see, all right, and you made some sign to Mr. Sostre that you wanted to talk to him in private?

A. Yes.

Q. All right. What happened next?

A. Sostre say "Well, will you have your friend leave the store".

Q. Sostre said that?

A. Yes.

Q. All right, and then what happened?

A. I told him he had to leave and I walked him to the door.

Q. You did walk him to the door?

A. Yes.

Q. And where did you leave him when you went back to the front of the store?

A. Standing out on the sidewalk.

Q. He was out on the sidewalk?

A. Yes.

Q. Did you say anything to him as you walked back with him?

A. I did say something but I can't recall what I said to him.

Q. Did you say something to the effect of "Why don't you stand over here, you can see from here"?

A. No, I don't recall that.

Q. You don't recall that. Could you have said that?

A. I doubt if I would say that.

Q. Okay, so when the other police officer, - could the police officer see you from where he was standing, Mr. Williams?

A. Sure, he could see into the store.

Q. Could he see you?

A. Sure.

Q. Could he see Mr. Sostre?

A. I couldn't answer that. I don't know.

Q. Isn't it a fact, Mr. Williams, that he had a clear view of you and Sostre and the bookstore from where he was standing?

A. He may have.

Q. Okay, and what happened after the police officer stood on the threshold or stood outside as you testified; what happened next?

A. I went back in, took the money out of my pocket and asked Sostre would he hold it for me.

Q. I am curious about that, Mr. Williams. You asked him to hold $15 for you?

A. Yes.

Q. Did you ever ask him to hold any money for you before?

A. Not money, but I asked him to hold something before.

Q. What was that something?

A. A suit of clothes.

Q. How long ago was that?

A. I have no idea.

Q. Was it three or four months before?

A. The best I can recall it was summer.

Q. Summer?

A. That's correct.

Q. Well, all right, and you said to him what, would you try to remember your words as best you can, Mr. Williams?

A. I don't know verbatim. I would have to say "Maybe I said this".

Q. Maybe you said what?

A. "Will you hold this for me".

Q. Did you say why?

A. No.

Q. You just took $15 out of your pocket and handed it to him and said "Will you hold this for me"?

A. Right.

Q. And he said "Sure"?

A. Yes.

Q. And then Mr. Sostre left the counter where he was standing, didn't he?

A. He did.

Q. He went into the back room, didn't he?

A. Yes.

Q. And he came up again, didn't he?

A. Yes.

Q. Do you know what he went into the back room for?
A. To give Geraldine the money.
Q. To give Geraldine the money. Geraldine was standing in the back room?
A. Yes.
Q. Are you sure about that?
A. I heard him talking to her. To me he said, "Hold on to this", is all I recall.
Q. He went back and gave Geraldine the money in the back room?
A. That's how I knew she was back there.
Q. All right, and then he came forward again?
A. Yes.
Q. And then what happened?
A. As he approached the counter, approached me, I reached across the counter and dropped my hand back to my shirt pocket.
Q. From where?
A. From where?
Q. Yes. You said you brought your hand back to your shirt pocket. Where had your hand been previously?
A. I had my hand like this.
Q. Where is that, resting on the counter?
A. Yes.
Q. I see. Did Mr. Sostre come close to your hand?

A. All I recall him doing is walking up in front of me.

Q. He walked up in front of you and then you took your hand and put it in your shirt pocket?

A. That's right.

MR. CREAM: May I have a moment, your Honor?

THE COURT: Surely.

BY MR. CREAM:

Q. Mr. Williams, you testified a little earlier that when you went into the store you said something to Mr. Sostre to the effect of "What's happening", is that right?

A. Yes.

Q. I see. Did you say anything to him like "Could you cop a bag"?

A. No.

Q. Never asked him if you could buy some heroine from him?

A. No.

Q. Or words to that effect?

A. No.

Q. And he never said to you that he didn't know what turns out to be a police officer and he wouldn't do business in front of him, is that right?

A. Would you restate that?

Q. I would be glad to. Mr. Sostre never said that he didn't know the police officer who was there and therefore he wouldn't do any business in front of him?

THE COURT: Mr. Cream, evidently the man wasn't in a uniform or anything.

THE WITNESS: No.

THE COURT: Just had ordinary clothes on?

THE WITNESS: Right.

MR. CREAM: Your Honor, I am using a police officer to indicate the identity of the person.

THE COURT: When he says "the police officer", then "I don't know the man there and therefore I won't do business with you", did he say anything like that?

THE WITNESS: No.

BY MR. CREAM:

Q. No conversation to that effect ever took place?

A. No.

Q. Okay. You never asked him if he could cop a bag?

A. No.

Q. Never bought any heroine from him?

A. No.

Q. Okay. Mr. Williams, are you sure that, - are you sure that Mrs. Robinson, - Geraldine Robinson was in the back of the store and that Sostre went back there and gave her the money?

A. As I recall it, yes.

Q. Well, you are about as sure of that fact as you are of any other fact that you testified to, aren't you?

A. I wouldn't swear on any conversation I may have had with anyone that night.

Q. Mr. Williams, you have been doing exactly that all afternoon. You have been swearing that you never asked Sostre to buy any dope. You have been swearing about an awful lot of things. Now, are you sure about that or aren't you?

A. I know that for a fact.

Q. You know that for a fact, you remember that conversation?

A. I know for a fact that I didn't buy any drugs off of him. I don't know about conversations.

Q. So you might have gone in there and asked him "Could you cop a bag"?

A. No, I didn't do that.

Q. Well, Mr. Williams, on one hand you testify that you are not sure about any conversation and on the other hand you testify that you are sure. Now, which is it?

A. You asked me "Do you recall words six years old", which I can't.

Q. So then you are not sure about anything that you said as far as conversations which took place on that evening, is that right?

A. That's right.

Q. All right.

A. Exact words.

MR. CREAM: Okay. I have no further questions.

THE COURT: Mr. Williams, at the present time you are in California and this is for a violation of parole on a California charge?

THE WITNESS: Probation.

THE COURT: Probation?

THE WITNESS: Yes.

THE COURT: When is your release date there, do you know? Is it a firm date or do you have to meet with a parole board or something?

THE WITNESS: No.

THE COURT: When is your date?

THE WITNESS: October 22nd.

THE COURT: October 22nd of this year?

THE WITNESS: Yes.

THE COURT: Do you have any other charges pending against you?

THE WITNESS: No.

THE COURT: Before you met with Sergeant Gristmacher, did he know you before that? In July, 1968, did you know him before that?

THE WITNESS: No, I never met him personally, no.

THE COURT: Did you know some other members of the Buffalo Narcotics Squad?

THE WITNESS: I had been arrested by them before.

THE COURT: You had been arrested before, and on prior arrests did you have any convictions?

THE WITNESS: Yes.

THE COURT: Was that for narcotic offenses?

THE WITNESS: Yes.

THE COURT: On the prior occasions were you sentenced to time or did you get probation or what was the situation?

THE WITNESS: Time.

THE COURT: You did some time?

THE WITNESS: Yes.

THE COURT: About how much? I know it is hard to remember sometimes.

THE WITNESS: I recall it was six months, one year and $500 fine.

THE COURT: I see. In this particular time when you were arrested in July of '68, - or '67, I am sorry, and you are in the County Jail; how long was it before that that you had been previously released? Was it

six months, a year, a couple of years?

THE WITNESS: I can't recall.

THE COURT: You can't recall. How long before you sent this letter to the Buffalo Narcotics Squad, how long had you been over there in jail?

THE WITNESS: Maybe two or three days.

THE COURT: About two or three days?

THE WITNESS: Yes.

THE COURT: On prior occasions had you given information to the Narcotics Squad, Buffalo Police Department before?

THE WITNESS: No.

THE COURT: Never before?

THE WITNESS: Never before.

THE COURT: What about other narcotics officers, any Federal officers or Sheriff's Department or anything like that, had you given anybody any information similarly before?

THE WITNESS: No.

THE COURT: This time, and can you recall what you wrote? What did you say in the letter?

THE WITNESS: That I can't recall, your Honor.

THE COURT: You can't recall. The other thing, first you had the meeting with Sergeant Gristmacher, right?

THE WITNESS: Yes.

THE COURT: When he first came there to visit you was anyone else with him or was he alone?

THE WITNESS: I believe on both occasions someone was with him.

THE COURT: The second time you related that Mr. Amico was with him.

THE WITNESS: Yes.

THE COURT: Please keep your voice up so the lawyers can hear you. On the first occasion, can you remember whether anyone was with him then?

THE WITNESS: I am quite sure there was someone with him.

THE COURT: That you just can't remember now, is that it?

THE WITNESS: No.

THE COURT: Then this arrangement was made to let you out on bail, right?

THE WITNESS: After the second meeting.

THE COURT: Yes, and as I understand it, he gave

you some money and you cannot remember how much money?

THE WITNESS: That's correct, your Honor.

THE COURT: And then you took a bus and you went out to Jefferson Avenue?

THE WITNESS: Yes.

THE COURT: At that time you related the conversation here, he said "I will see you about 9:00 o'clock"?

THE WITNESS: Yes.

THE COURT: Did he say anything else to you about what he was going to do then or what was expected of you?

THE WITNESS: He may have, your Honor, but I couldn't say for sure.

THE COURT: The officer who went with you in the evening, was he with Sergeant Gristmacher in the afternoon?

THE WITNESS: When I first went to the Police Station?

THE COURT: When you first went to the Police Station?

THE WITNESS: No, he wasn't there.

THE COURT: He was not. When was the first time you saw the officer who traveled out to

Jefferson Street with you later in the evening?

THE WITNESS: After he picked me up.

THE COURT: Is that the first time you saw him?

THE WITNESS: After he picked me up and brought me down to the police station.

THE COURT: In the evening when Sergeant Gristmacher picked you up and when you drove down from Jefferson Avenue down to police headquarters did you have any conversation with him in the car during that period of time?

THE WITNESS: I can't recall, your Honor.

THE COURT: Did he give you any instructions about what you were supposed to do or where you were going to go?

THE WITNESS: I would assume that he did but I just can't recall. At the time I was under the influence.

THE COURT: I know that when you first met with Sergeant Gristmacher and then you met secondly with Sergeant Gristmacher and Mr. Amico that, as you recall it now, they asked you about various narcotic peddlers and then they asked you about

Mr. Sostre?

THE WITNESS: Yes.

THE COURT: Right?

THE WITNESS: Right.

THE COURT: And then they said something about "Well, we are interested in him because we think he started the riot", and so forth?

THE WITNESS: Yes.

THE COURT: Was his name, - did they bring his name up again when you met with him and when Sergeant Gristmacher gave you the money the first time?

THE WITNESS: You want me to answer?

THE COURT: Yes.

THE WITNESS: I can't recall.

THE COURT: Then he left you off or you got the bus and then at 9:00 o'clock Sergeant Gristmacher picked you up and you came down to Police Headquarters. In the journey down there, was anything said about Mr. Sostre during that period of time?

THE WITNESS: Not that I recall, your Honor.

THE COURT: In other words, you just can't

remember anything about that conversation?

THE WITNESS: Like I say, I was under the influence at the time, you know.

THE COURT: As you remember, you were under the influence at the time?

THE WITNESS: Yes.

THE COURT: When you got down to Police Headquarters, as I understand it, up until this time neither Sergeant Gristmacher or anyone else had told you what was going to happen that evening?

THE WITNESS: I never said nothing was said. I am just saying I just can't recall it. I presume they did, you know.

THE COURT: You can't recall about any plan that was laid out?

THE WITNESS: No.

THE COURT: Did you know whether or not that you were going to meet Sostre later on in the evening or that you were going to see other officers or did you know what you were going to do, whether you can remember the conversation?

THE WITNESS: I knew when I left the jail, that's what I left the jail for. I didn't come

out of the jail thinking I was going to bust just anybody. I knew who I was going to go bust.

THE COURT: But did you know when it was going to happen?

THE WITNESS: No, no, no.

THE COURT: All right. When you got down to the headquarters and you say he left you in the front seat and then you related to us how you had half of or at least some part of a bag, whether it is half or three-quarters of what, you at least had something?

THE WITNESS: Yes.

THE COURT: And you also had some other money?

THE WITNESS: Yes.

THE COURT: Can you remember now about how much other money you had?

THE WITNESS: No, I can't.

THE COURT: Was it in green bills or was it in change or what form was it in, do you remember?

THE WITNESS: I don't think I would have had over $3, your Honor.

THE COURT: You might have had around $3?

THE WITNESS: Yes.

THE COURT: Then when Sergeant Gristmacher came out with this other officer and they had you get out of the car and there was a search, right?

THE WITNESS: Yes.

THE COURT: Then, of course, did they find the money?

THE WITNESS: Find the money?

THE COURT: They said "Empty your pockets," right?

THE WITNESS: Yes.

THE COURT: When you opened your pockets I suppose then you had some money there?

THE WITNESS: Yes.

THE COURT: What was done with that money, do you remember?

THE WITNESS: Nothing was taken away from me.

THE COURT: You just kept it, right?

THE WITNESS: Yes, just patted me down.

THE COURT: Then when you traveled from police headquarters out to Jefferson Avenue, what was the conversation in the car then when Sergeant Gristmacher and the officer and yourself were in the car?

THE WITNESS: I don't recall.

THE COURT: Is it you don't know or you can't remember?

THE WITNESS: I can't remember.

THE COURT: Was there some conversation?

THE WITNESS: I believe so, your Honor, in that distance, yes.

THE COURT: Anything else, Mr. Chevigny?

MR. CHEVIGNY: Do you have anything, Mr. Cream? I would like to ask some questions.

THE COURT: All right.

REDIRECT EXAMINATION BY MR. CHEVIGNY:

Q. Now, you stated in response to one of Judge Curtin's questions that you knew when you got out of jail that you were going to, as you put it, bust Mr. Sostre. Now, how long before you got out of jail had you seen Mr. Amico and Mr. Gristmacher?

A. How long after I got out of jail?

Q. Before you got out of jail.

A. I see them that night.

Q. The night before you got out of jail, is that right?

A. The night before.

Q. And in substance what did you tell Mr. Amico? Withdraw it. What did Mr. Amico tell you in substance?

A. He told me that they was interested in Martin Sostre because they believed that he was the cause of riots and he asked me would I be willing to cooperate in helping them make a sale on him and I told him "Yes".

Q. Did he say anything about your getting out of jail?

A. He said, "Are you sure?", and I said "Yes", and he said "Okay, wait right here, I will be right back". He left the room and he was gone a few minutes and he came back and he said "I couldn't get in touch with the lawyer or the judge but I guarantee you will be out tomorrow."

Q. Now, at either one of the meetings, - withdraw. I will take the meetings one by one. In the first meeting with Mr. Gristmacher without Mr. Amico, did Mr. Gristmacher mention any other alleged sellers besides Martin Sostre?

A. Well, he started off the conversation by asking me who I knew and I told him and then he brought up Sostre's name.

Q. Did he ask you about anybody else besides Sostre?

A. I just said, - I mean after I told him who I knew?

Q. Yes.

A. No.

Q. And he mentioned Sostre. Did he mention anybody else?

A. No, nobody else.

Q. Did Mr. Amico mention anybody else besides Sostre?

A. No.

Q. All right. Did you do any work for the Buffalo Police Department after the Sostre case?

A. I wouldn't exactly say I did any work for the Buffalo Police after the Sostre case.

Q. Excuse me, after the arrest.

A. After the arrest, no.

Q. Did you ever see Sergeant Gristmacher after that?

A. Oh, I see him on numerous occasions.

Q. After the --

A. After the arrest.

Q. Did you ever participate in any other arrests?

A. In the Buffalo area, no.

Q. Anyplace else?

A. Niagara Falls.

Q. Did Sergeant Gristmacher participate in that in any way?

A. As I recall it, he was in on one arrest.

Q. And where was that?

A. In Niagara Falls.

Q. In what way was Sergeant Gristmacher involved in that arrest?

A. Well, I hadn't asked too many questions, you know, so what they say to do, I do.

Q. What did he tell you?

A. I don't know what his position there was, you know. He

was there and I didn't ask him why.

Q. He was where? What did you see? Describe the circumstances surrounding Sergeant Gristmacher's participation, if any.

A. I can't recall the detective I was working for at the time when I was in Niagara Falls, but he picked me up one night and he had Sergeant Gristmacher with him and he say they wanted to make a bust on Clarence Torrey or something like that and I told him, you know, - because I couldn't make a buy from him.

Q. Well, you were working with the detective from Niagara Falls, is that right?

A. Yes.

Q. How did you come to meet the detective from Niagara Falls, if you know?

A. I was walking the street one day and I think, - when a detective by the name of Ron Smith, something like that, I think it was, picked me up and took me down to police headquarters. He picked me up and told me Alvin Gristmacher wanted to see me.

Q. Do you mean Ronald Smith of the Buffalo Police Department?

A. Yes, Narcotics Squad.

Q. Go ahead. Then what happened?

A. Then he took me down to Police Headquarters and then I met Alvin Gristmacher and there was another detective

with him and he introduced me to him and he told me that he wanted me to work with this policeman for a while.

Q. Sergeant Gristmacher told you that?

A. Yes.

Q. And the fellow he introduced you to, is that the Niagara Falls policeman that you are referring to?

A. Niagara Falls or State Trooper, I think he was, but he was in plain clothes.

Q. All right. You say you met Sergeant Gristmacher on a number of occasions. Can you describe other occasions on which you met Sergeant Gristmacher?

A. Well, usually when I wanted some money.

Q. Did you get money from Sergeant Gristmacher other than on July 14, 1967?

THE COURT: Excuse me. Is this before or after July of '67?

BY MR. CHEVIGNY:

Q. All right, I will withdraw the question. After July 14, 1967, did you get money from Sergeant Gristmacher?

A. Yes.

Q. Do you recall about how many times?

A. No, I couldn't recall how many.

Q. Did you have any other contact with him apart from the money?

A. Well, I was arrested a number of times and each time I

was arrested I would call him and he would come down and get me out, wherever I was busted at.

Q. And did you meet Mr. Amico at any time after July 14, 1967?

A. I don't believe so.

Q. Now, these episodes that you refer to of your meetings with Sergeant Gristmacher, did they occur before or after the time you testified at Mr. Sostre's trial, if you know, or both, if you know?

A. Oh, I know about before but I am trying to recall that.

THE COURT: Excuse me. Could I have the date of the trial, please? You have the transcript.

MR. CREAM: Your Honor, the trial began on March 4, 1968 and I believe that it concluded on March 14th of 1968.

BY MR. CHEVIGNY:

Q. Do you remember, - I take it you do remember meeting Mr. Gristmacher on a number of occasions before the beginning of March 1968, is that right?

A. Yes.

Q. Do you remember meeting Mr. Gristmacher after March 4, 1968?

A. No, I don't.

MR. CREAM: Excuse me, Mr. Chevigny. Your Honor,

the proceedings ended on March 18th of 1968.

THE COURT: Thank you, Mr. Cream.

THE WITNESS: I do recall I did. I had contact with Chief Amico after the trial.

BY MR. CHEVIGNY:

Q. After the trial?

A. Yes.

Q. Do you mean Mr. Sostre's trial?

A. Yes.

Q. Do you know about when it was?

A. Do I know what it was about?

Q. No. Do you recall about how long after the trial had occurred? If you don't know --

A. Yes. I guess it was about two months and I did have, - with Gristmacher after the trial but I had talked to him afterwards.

Q. You talked with Alvin Gristmacher after the trial. What about Chief Amico?

A. Both.

Q. Can you recall what that was about?

A. I can't recall what it was about. Oh, yes, yes, yes, right. He got me a job. Alvin Gristmacher got me a job at Bethlehem Steel and he wanted to go on speaking engagements.

THE COURT: He wanted you to do what, please, Mr. Williams?

THE WITNESS: Go on speaking engagements, talk to different schools about the drugs.

BY MR. CHEVIGNY:

Q. You are now, as you testified in the, - withdrawn. With respect to your present incarceration in California for violation of probation, do you know of any conditions placed by the judge on that violation with relation to education or drug programs or anything like that?

A. Oh, well, he stipulated that as soon as I obtain a high school diploma, I would be released.

Q. And did you get that high school diploma?

A. It was within, - I was within a week of getting it when I came here. Otherwise I would have been out by now.

Q. Did you cease the high school course as a result of being brought here, is that what you are trying to say?

A. Yes. It was just interrupted, really, you know.

Q. Now, the bag of drugs that you had on July 14, 1967, can you remember anything about it? Can you remember it well enough to describe it?

A. It was the usual typical bag that you buy drugs in.

Q. Can you describe for the Court what a typical bag that you buy drugs in, - how big is it?

A. I say about an inch long, maybe about three-quarters wide and like an envelope.

Q. All right.

A. I guess you would say.

Q. Do you remember the appearance of the, - of 1412 Jefferson? Do you remember the way the place looked?

A. Yes, I can recall it.

MR. CHEVIGNY: I wonder if I could get these pictures marked, Defendant's Exhibits 3 and 4. I am sorry, Petitioner's. You see what my background is; Petitioner's Exhibits 3 and 4.

(Petitioner's Exhibit Number 3 marked for identification.)

(Petitioner's Exhibit Number 4 marked for identification.)

BY MR. CHEVIGNY:

Q. Thank you. I show you a picture. I ask you if you recognize this premises, sir? I'm showing you Exhibit 4. If you don't recognize it, say so.

A. Today, no.

Q. You don't recognize it. All right. I will try you on 3. Do you recognize 3?

A. I can recognize it. I could recognize that too, but I was on the assumption that you was speaking that night.

I thought you was trying to say the store looked like this that night.

Q. I will rephrase the question. Can you identify the premises? Do you know what that premises is by looking at the photograph?

A. Yes.

Q. And can you describe or tell the Court what it is?

A. Well, it used to be Martin Sostre's bookstore.

Q. All right. Now, can you tell the Court how that photograph differs, how it is different from the way it was on July 14, 1967?

A. The best I can recall, the only way you could actually see in the store --

MR. CREAM: Objection, your Honor. That is not the question.

THE COURT: No. How is it different, Mr. Williams, if you can recall?

BY MR. CHEVIGNY:

Q. I show you both 4 and 3 now, and can you tell us, - don't tell us the operation of your mind, - tell us if you can in physical terms about the store and how it differs in those photographs from the way it looked on July 14, 1967, if you can.

A. Well, the difference is that it was boared up. All the windows was boarded up.

Q. And the windows in that photograph are not boarded up, is that right?

A. They are not.

Q. Now, could you tell us which windows were boarded up? Just describe in your own words what you mean by "boarded up". What was boarded up?

A. The front windows facing the street and the windows as you enter to go in the store were boarded up from top to bottom.

Q. You mean the windows that are at an angle to the street in that photograph, is that correct?

A. That's correct.

Q. Were they boarded up also?

A. Yes.

Q. And it isn't called Afro-Asian Bookstore anymore, is it?

A. That is correct.

Q. Is there any other aspect in which you know that it differs from the way it looked on July 14, 1967?

A. No, I can't notice any difference. Maybe the surroundings may be a little different but the store itself, no, I can't tell any difference.

MR. CHEVIGNY: I will have to call the photographer before I can offer it, your Honor.

THE COURT: Why don't you do this, Mr. Chevigny, could you show those to Mr. Cream, please.

Perhaps he can agree and perhaps we can --

MR. CHEVIGNY: I don't think he is in a position to stipulate.

THE COURT: All right. Maybe there are some additional points you want to make, Mr. Chevigny, if you refer. The photographer is here if you want him.

MR. CHEVIGNY: We will put the photographer on for a couple of minutes later, your Honor.

THE COURT: All right.

BY MR. CHEVIGNY:

Q. Mr. Williams, do you recall where in the store that counter was as you entered the store?

A. It was, - from the street it would be on your left.

MR. CREAM: I am sorry. I couldn't hear the answer.

THE COURT: Go ahead, Mr. Williams, repeat it.

THE WITNESS: As you entered the store from the street it would be on your left.

BY MR. CHEVIGNY:

Q. With respect to the car, when you were seated in the car and at the time you came to Dupont and Woodlawn, as you stated, you were seated in the back, you testified, I think, that you reached under the seat to get the drugs. Just for purposes of clarification, did you

reach under from the back or from the front?

A. From the back.

MR. CHEVIGNY: Thank you. I have no further questions.

THE COURT: Nothing further?

MR. CHEVIGNY: Thank you.

THE COURT: Mr. Cream.

MR. CREAM: Yes, your Honor.

THE COURT: You have some questions?

RECROSS EXAMINATION BY MR. CREAM:

Q. Mr. Williams, you said you did some more undercover work for Detective Sergeant Gristmacher after the Sostre trial?

A. I said at his request but it wasn't --

THE COURT: After the trial, or is that the time period you are concerned with?

THE WITNESS: March of 1968.

BY MR. CREAM:

Q. March of '68?

A. No.

THE COURT: Not after March of 1968?

THE WITNESS: No.

BY MR. CREAM:

Q. You did, however, do some more undercover work for him

after Mr. Sostre was arrested, didn't you?

A. Yes.

Q. And these involved arrests in Niagara Falls, New York?

A. Yes.

Q. I see, and Sergeant Gristmacher was your contact?

A. No, he wasn't.

Q. He was your liaison between the Niagara Falls Police Department and yourself?

A. No, I wouldn't say so, no.

Q. Did you talk to Sergeant Gristmacher about your work in Niagara Falls?

A. No, I didn't talk to him about it. He just had me picked up and brought down and introduced me to the man and asked me would I work with the fellow.

Q. I see, so Sergeant Gristmacher arranged the meetings between yourself and the police officers from Niagara Falls, is that correct?

A. Yes. He introduced us.

Q. About how many cases were you involved in, Mr. Williams, in Niagara Falls?

A. The best I can recall was one.

Q. Just one. Do you think it could have been more like six or seven?

A. Not that I recall.

Q. You don't recall whether it was six or seven?

A. I would bet on it it wasn't six or seven.
Q. I couldn't hear you.
A. I say I could bet on it it wasn't six or seven. I believe it was the one that I stated.
Q. And that was Clarence Torrey?
A. Yes.
Q. You weren't involved in any other cases in any other way in Niagara Falls?
A. I was involved in a case that didn't go through.
Q. What do you mean it didn't go through?
A. Well, he wanted me to set up a burglary for him and they would be waiting as the guys broke in the place.
Q. What do you mean set up a burglary?
A. Told them I had a good place with TV's inside with the locks off the door and they would be waiting inside for them.
Q. And they wanted you to get some suspects to do that, is that what you are saying?
A. Yes.
Q. And what happened with that?
A. Well, it almost materialized. Somebody went on the roof. I guess one of the policemen.
Q. You mean they didn't catch them doing it?
A. No. They moved too soon or acted too soon, I guess you would say.

Q. Who moved too soon, the police officer?
A. Yes.
Q. So that you did in fact go through with what the police officers had asked you to do?
A. I did, yes.
Q. Okay. You didn't set it up for a frame?
A. It was a frame from the go.
Q. I beg your pardon?
A. It was a frame from the start.
Q. I don't understand.
A. It was a frame from the start.
Q. What was a frame?
A. That they would open the place up and they would be waiting inside. It was a frame all the way. It is simple.
Q. Do you mean if a police officer asks you to --
A. He took me to the place, showed me the place, told me what time to bring them there, showed me where they would be waiting at. It was a frame.
Q. I see. Is that the same kind of a frame that happened to Mr. Sostre?
MR. CHEVIGNY: I object to that, your Honor. It is vague and asks for a conclusion.
THE COURT: I think it is argumentative. Sustain the objection.

BY MR. CREAM:

Q. What kind of a frame were you asked to develop with Mr. Sostre, Mr. Williams?

MR. CHEVIGNY: I object, your Honor. There is no testimony he was asked to develop a frame.

BY MR. CREAM:

Q. I am glad that counsel agrees with that. I will withdraw the question. Now, Mr. Williams, you testified that you lied to Sergeant Gristmacher about the buying of the drugs, is that right?

A. I didn't say I lied to Gristmacher about buying the drugs.

Q. Well, didn't you tell Sergeant Gristmacher --

THE COURT: What period is this, after or before?

BY MR. CREAM:

Q. I am sorry, your Honor. I will try to clarify the question. After you went into the bookstore on that evening you came out with a bag of heroine?

A. That's correct.

Q. You went over to Sergeant Gristmacher with the bag of heroine?

A. Yes, right.

Q. And then what happened?

A. Well, I told him I bought it from a Martin Sostre.

Q. You told him you bought it from Martin Sostre?

A. Yes.
Q. By telling a lie?
A. Yes.
Q. And you told Martin Sostre that you wanted him to keep $15 for you but that was a lie, wasn't it?
A. That was the truth.
Q. Well, you didn't want him to keep $15 for you, according to your testimony you wanted to set him up for an illegal sale, is that what you wanted to do?
A. You are trying to confuse me.
Q. I beg the Court's indulgence. Mr. Williams, I was asking you whether you told Mr. Sostre that you wanted to have him hold the $15 for you. Did you tell him that?
A. Yes.
Q. That was a lie.
THE COURT: Mr. Cream, does this help? I mean we are getting into --
MR. CREAM: If the witness can't answer the question I will withdraw it.
THE COURT: I think it is really up to, I suppose, if that is what he said, it was a lie.
MR. CREAM: All right.
THE COURT: According to the way you look at it. I don't know whether, - we have gone over it, though. I don't know whether it

helps or not. We are not in front of a jury here, Mr. Cream.

BY MR. CREAM:

Q. All right, Judge. I will withdraw the question. Mr. Williams, you testified at Mr. Soutre's trial, did you not?

A. I did.

Q. And you testified that you bought drugs from him, did you not?

A. I did.

Q. And that was a lie, was it not?

A. Yes, it was.

Q. According to your testimony. Now, getting back to that bag of drugs, Mr. Williams, that you purchased from, or that you bought with Sergeant's Gristmacher's money, okay?

A. Yes.

Q. Okay. Now, was this the kind of a bag that you bought from him?

A. You are too far away.

Q. I am too far away. Well, was this the size of it?

A. You are too far away.

Q. All right. Was this the size of it?

A. If it is folded, probably would be the size of it.

Q. Okay.

A. It is a little too long from here, like I say, you are too far away.

Q. Was that the size of it?

A. Folded up, I suppose it would be the size.

Q. The bag you bought, wasn't that folded up when you bought it?

A. No.

MR. CREAM: Again I beg the Court's indulgence, your Honor.

THE COURT: Let us put it all on the record, whatever is said.

BY MR. CREAM:

Q. Mr. Williams, is this the size bag that you purchased from whoever it was that you purchased it from that night?

A. It is too large.

Q. Too large. Would you fold up that bag to the proper size? This is the correct size?

MR. GREEN: Did you spill it out?

BY MR. CREAM:

Q. It is just sugar. Is this the correct size, Mr. Williams?

A. Yes.

Q. Was this the size of the bag that you put underneath the seat of that car that night?

A. That is correct.

Q. And this was the size of the bag that you put into your pocket before you went into the bookstore that night?

A. Yes.

Q. And this was the size of the bag that you brought out and gave to Sergeant Gristmacher that night?

A. Yes.

MR. CREAM: If your Honor please, I would like to put this in evidence purely for the purpose of establishing the size of the bag since --

THE COURT: Can you and Mr. Chevigny measure that?

MR. CREAM: I don't have a rule.

MR. CHEVIGNY: I don't have a rule.

THE COURT: Here is a rule. Just measure it, and what color was it, was it white?

THE WITNESS: Same color.

THE COURT: The same color.

MR. CREAM: A white bag approximately two and seven-eighths inch long.

MR. CHEVIGNY: No, one and seven-eighths.

THE COURT: Lawyers are notorious for being bad at arithmetic.

MR. CREAM: I stand corrected, one and seven-eighths, by seven-eighths.

MR. CHEVIGNY: That is so stipulated.

THE COURT: Thank you, Mr. Chevigny.

MR. CREAM: No further --

THE COURT: Anything further, Mr. Chevigny?

MR. CHEVIGNY: No. I have nothing.

THE COURT: All right, Mr. Williams, thank you. What next? You have some testimony about the pictures, Mr. Chevigny?

MR. CHEVIGNY: Yes, but I don't know whether Mr. Cream wants to cross examine Mr. Sostre, whether that would be most orderly or --

MR. CREAM: I have no questions of Mr. Sostre and I have no objection to Mr. Chevigny putting on the witness now, although he has rested.

MR. CHEVIGNY: I am sorry. I would move to reopen.

MR. CREAM: I have no objection with respect to this witness.

THE COURT: I will grant your motion.

MR. CHEVIGNY: I recall Joel Sucher.

* * * * *

JOEL SUCHER, a Witness called by and in behalf of the Petitioner, having been previously duly sworn, resumed the witness stand and testified further as follows:

REDIRECT EXAMINATION BY MR. CHEVIGNY:

THE COURT: You have been sworn before, Mr. Sucher.

BY MR. CHEVIGNY:

Q. Mr. Sucher, I show you Plaintiff's Exhibit, - Petitioner's Exhibits 3 and 4. Did you take those photographs, Mr. Sucher?

A. Yes, I did.

Q. And when did you take them?

A. At 1412 Jefferson.

Q. That is where you took them. You took them at 1412, but what time of day?

A. About 2:00 o'clock this afternoon.

Q. Today?

A. Yes.

Q. May 30th?

A. Yes.

Q. And with what type of a camera?

A. A Polaroid Square Shooter.

Q. And did you look, did you see the premises 1412 Jefferson before you looked into the eye of the camera?

A. Yes, I did.

Q. Were you able to see the premises 1412 Jefferson through the eye of the camera as you looked at it?

A. Yes, I was.

Q. And are those two photographs, are they accurate representations of the premises at 1412 Jefferson Avenue at the time you took them?

A. Yes, they are.

MR. CHEVIGNY: All right. I would offer them in evidence, your Honor.

THE COURT: Mr. Cream.

MR. CREAM: Your Honor, I would require at this point for the purposes of the introduction to determine whether I have or have not any objection to its being introduced.

THE COURT: You may object certainly to the introduction.

MR. CREAM: Your Honor, I would stipulate to their introduction to show the premises at 2:00 o'clock on the afternoon of this date. For any other purpose I would object.

THE COURT: I will admit them into evidence and as far as any relevancy or materiality I will, of course, consider any argument

that you want to make along that line, Mr. Chevigny.

MR. CREAM: Your Honor, I would like to ask a couple of questions.

THE COURT: Do you want to ask?

MR. CREAM: Yes.

THE COURT: All right.

RECROSS EXAMINATION BY MR. CREAM:

Q. Mr. Sucher, what time did you take these pictures?

A. Approximately 2:00 o'clock this afternoon.

Q. And you took them with a Polaroid Square Shooter?

A. Yes.

Q. All right, can you describe as best you can the type of lens which that camera has?

A. A cheap plastic lens.

Q. A cheap plastic lens?

A. Yes.

Q. All right. I notice from the photographs, Mr. Sucher, that there are certain reflections in the glass.

THE COURT: Excuse me. Mr. Sucher, did you take this from the same vantage point that you described to us this morning?

THE WITNESS: No, I did not.

THE COURT: Not from the dentist's office?

THE WITNESS: I took these from the street.

THE COURT: From the street, all right.

BY MR. CREAM:

Q. These are from ground level?

A. Yes.

Q. All right, and these reflections, Mr. Sucher, I refer to in the pictures which appear in the glass, those are reflections of what little sun we have here in Buffalo?

A. Yes, I believe so.

Q. Okay, and is it those reflections that block the vision into the store, as near as you can tell?

A. They block it somewhat.

MR. CREAM: I renew my objection but have no further questions.

THE COURT: Could I see the pictures, please. They will be marked in evidence.

(Petitioner's Exhibit Number 3 received in evidence.)

(Petitioner's Exhibit Number 4 received in evidence.)

THE COURT: Is there any further testimony? Mr. Chevigny, do you have anything further now, in view of the cross examination and so forth?

MR. CHEVIGNY: I don't, but I would like to leave, - there is this --

THE COURT: We could do this so that we could have, - we could take a break.

MR. CHEVIGNY: It isn't that. It is the film is being developed and I haven't seen it myself as yet and I would like to see it this afternoon and I would like to leave it open.

THE COURT: I would receive that with the same understanding, that Mr. Cream here has certain arguments which should be considered because of the difficulty of knowing whether the circumstances are the same as far as lighting and many other factors.

MR. CHEVIGNY: Yes, your Honor.

THE COURT: Do you have anything further, Mr. Cream?

MR. CREAM: Yes, your Honor. I have several witnesses.

THE COURT: You closed before and then reopened briefly.

MR. CHEVIGNY: Apart from the film we are finished, your Honor.

THE COURT: We will take a break of about ten

minutes and then resume. Spectators, stay in your places until Mr. Sostre leaves with the marshals. We will resume in about ten minutes.

MR. CREAM: If your Honor please, could we have this bag marked as an exhibit and left with the clerk?

THE COURT: If you desire, we can mark it.

MR. CHEVIGNY: I have no objection, although I think the dimensions are clear.

THE COURT: Mark it.

(Respondent's Exhibit Number 1 marked for identification.)

THE COURT: We will be in recess.

(Recess taken at 3:45 p.m.)

* * * * * * * *

PROCEEDINGS: After recess, 4:05 p.m.

APPEARANCES: As before noted.

THE COURT: Mr. Cream, I have some things that I must do, but maybe we can go to about 4:30 this afternoon.

MR. CREAM: All right, your Honor. Thank you.

THE COURT: Very well.

P E T E R N O T A R O (25 Delaware Avenue, Buffalo, New York), called as a witness by and in behalf of the respondents, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CREAM:

Q Mr. Notaro, are you currently employed by the Erie County District Attorney's office?

A Yes, I am.

Q In what capacity are you so employed?

A I am Chief of the Appeals Bureau.

Q For how long have you been employed by the District Attorney's office?

A Since January 1, 1964.

Q All right. Mr. Notaro, did there come a time during July or June of 1967 when you viewed certain motion pictures?

A It was July of 1967.

Q Would you describe as best you can from your recollection the natum of those pictures?

A I have a recollection - -

MR. CHEVIGNY: No, no, I am going to object. This is not the best evidence, somebody's recollection of a motion picture. If the motion pictures can't be found, I object, if the Court please.

THE COURT: Mr. Chevigny, on the pictures, first of all, these pictures are just as available to the petitioner as they are to the respondents and as I understand it, the best notion we have of where they are is that they are down in some committee, some Senate Committee. If anyone is going to make any argument about them, then I will listen to the testimony. If no one is going to make any argument about them, then the testimony, it seems to me, is immaterial. Do you desire to argue about this at all?

MR. CHEVIGNY: On that basis, no.

THE COURT: Because you see, Mr. Chevigny, the pictures, I want, so you can understand my feeling on this, so you can approach

and coming out of Martin Sostre's bookstore, that on the basis of those photographs, those addicts were identified and I believe brought to trial.

MR. CHEVIGNY: I didn't get the last. What was the last phrase?

MR. CREAM: Strike the last phrase. That is in error.

THE COURT: Does that have anything to do with the testimony of Mr. Williams here today?

MR. CREAM: Your Honor, I think it is going to have relevance to the testimony which will be presented later in this proceeding.

THE COURT: The photos wouldn't be received in evidence, - they weren't received in evidence at the trial, I understand.

MR. CREAM: No, they were not.

THE COURT: Mr. Chevigny, do you object to this testimony about the pictures?

MR. CHEVIGNY: I think I do, your Honor. Yes, I renew my objection.

THE COURT: I will sustain the objection.

BY MR. CREAM:

Q Mr. Notaro, did there come a time subsequent to the trial and conviction of Martin Sostre in the Erie County Court

that you had discussions with Arto Williams?

A. Yes.

Q. And what did those discussions involve?

A. They involved his fear of being injured in some fashion by, as he said, the friends of Martin, and he wanted to know if some arrangements could be made for him to finish his probation or his parole in California.

Q. I see. And on the basis of those requests or those threats, was his probation or parole, in fact, transferred to California?

A. Some arrangement was made with the Probation Department, I believe, to get their consent for him to finish whatever he had left on his probation in California.

Q. I see, and was this request initiated by Mr. Williams himself?

A. It may have been an attorney. I don't recall who initiated it, but I do recall talking to him specifically about it.

MR. CHEVIGNY: I am sorry. I object to the word "him". I don't know who "him" is.

THE WITNESS: Arto Williams.

BY MR. CREAM:

Q. So that on the basis of these discussions, Mr. Williams did go to California?

A. I belive he did. I never followed through to see whether he had or not.

Q But your recollection is of the reported threats of violence against Mr. Williams or his family.

MR. CHEVIGNY: I object.

THE WITNESS: That's correct.

MR. CHEVIGNY: I object, your Honor, that is not the question he was asked before, reported threats of violence.

THE COURT: These are secondhand. It is what Mr. Williams relaid. I will sustain the objection.

MR. CREAM: Your Honor, Mr. Williams testified that he was - -

THE COURT: You are right about that.

MR. CREAM: That he was not threatened.

THE COURT: I will listen to the questions.

MR. CREAM: Thank you, your Honor.

THE COURT: Overruled.

MR. CREAM: Would you, - would the reporter read the last question back, please.

(Last question read.)

THE WITNESS: My recollection is that Mr. Williams told me that his family had been threatened and that he was afraid some friends of Martin were going to injure him in some fashion and he wanted to go to California

to finish probation or parole, whatever the case was.

MR. CREAM: I have no further questions.

CROSS EXAMINATION BY MR. CHEVICNY:

Q Mr. Notaro, do you know anything about the circumstances under which Arto Williams came to get probation?

A No, I do not personally.

Q You are an Assistant District Attorney now, are you not?

A Yes.

Q And you were an Assistant District Attorney in 1968, were you not?

A Yes.

Q And I take it you were not working directly on the prosecution of Arto Williams, is that correct?

A On the prosecution of Arto Williams?

Q Yes.

A That's correct.

Q With respect to the present time, have you, in the last week, spoken to Arto Williams' attorney?

A Briefly, out in the hall corridor just immediately before I took the stand. Oh, I am sorry. I think he called me to ask me whether I intended to do anything about any possible perjury.

Q Did you answer him?

A. I said it depended on whether the perjury developed on the trial or not and that I would take it up with Mr. Dillon who is the District Attorney before any final decision was made on whether to lay a perjury charge.

Q. Does that mean at the present time no final decision has been made as to whether to lay a perjury charge against Arto Williams?

MR. CREAM: Your Honor, I object to this entire line of questioning as not being covered on direct examination.

THE COURT: I will overrule it.

THE WITNESS: A final decision by Mr. Dillon, no.

BY MR. CHEVIGNY:

Q. Has a preliminary decision been made?

A. Yes, I have made a decision.

Q. To prosecute?

A. I have made a decision that he has committed perjury from the time he started to testify in this courtroom.

Q. And you intend to prosecute him?

A. I intend to recommend it, yes.

Q. Did you communicate that to Mr. Cream?

A. No, not at all.

Q. Did you communicate it to Mr. Cream?

A. No.

MR. CHEVIGNY: All right. No further questions.

Thank you.

THE COURT: Mr. Cream?

MR. CREAM: I have no redirect.

THE COURT: Next witness.

MR. CHEVIGNY: Your Honor, may the record show that Mr. Notaro has been in the courtroom since the beginning, almost, and has been at the side of Mr. Cream and has been available to consult with him.

THE COURT: Yes, certainly.

MR. CHEVIGNY: And I assume that that arrangement will continue.

THE COURT: Mr. Notaro, I think that he has been here and actually, in the beginning, there was some question about documents and I asked him to consult with the Attorney General and I think that he has been here at the table. There is no question about it, and perhaps will continue there.

MR. CHEVIGNY: Thank you, your Honor.

MR. NOTARO: On that request, your Honor, I was seated over there as a spectator.

THE COURT: Very well. Mr. Cream.

MR. CREAM: The next witness, your Honor, is John Steinmetz. I believe he is upstairs

in the marshal's office.

THE COURT: This is sort of unusual. There have been several requests by some of the people from the press, radio and so forth, to have a word or two with Mr. Williams. Mr. Williams is here now in the court house. If anyone wants to talk to him briefly, with the permission of his lawyer, Mr. Green, they could. I say this as a practical thing to you, his testimony is finished and he is going to go back to the Erie County Penitentiary in Alden and probably will not return to the court. See Mr. Koelbl or Mr. Hoffarth.

* * * * * * * * * * *

J O H N D. S T E I N M E T Z (Troup A, Batavia, New York), a witness called by and in behalf of the respondents, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CREAM:

Q Mr. Steinmetz, are you currently employed?

A Yes.

Q By whom are you employed?

A By the State Police, Division of State Police.

Q And what is your title or rank?

A Investigator in the Bureau of Criminal Investigation.

Q I see. How long have you been a member of the New York State Police?

A Twenty-one years.

Q Were you a member of the New York State Police on or about July 14 of 1967?

A Yes, I was.

Q Mr. Steinmetz, do you recall at or approximately 9:00 o'clock of that evening where you were located?

A Yes.

Q Where were you located?

A I was located in a surveillance location directly across the street from 1412 Jefferson.

Q Do you recall the street address at which you were located?

A No, I don't.

Q All right. Was there anyone with you that evening?

A Yes.

Q Who was with you that evening?

A Trooper Jack Wilcox.

Q Now, would you describe, as best you can, the events which you yourself witnessed that evening?

A We arrived at the location and were taking pictures of the

activities at 1412 - -

Q. Excuse me.

A. At approximately 11:50 that evening, we observed Trooper Lou Steferson and a colored male known to me as Arto crossed Jefferson Avenue from Woodlawn which was right around the corner from our surveillance area; walk over to 1412 and enter the bookstore.

Q. All right. Excuse me. You said you were taking pictures. Were you taking pictures?

A. No. Trooper Wilcox was taking pictures.

Q. Trooper Wilcox was taking the pictures?

A. Yes.

Q. All right. This was at approximately 11:40 p.m.?

A. 11:50, around 11:45, 11:50.

Q. All right. I can presume, may I not, that it was dark at that hour?

A. Yes, it was.

Q. Were the lights on at 1412 Jefferson Avenue?

A. Yes, they were.

Q. Would you describe as best you can lighting conditions in 1412 Jefferson Avenue?

A. It was fairly well lighted. The two front main big window were boarded up, but from our surveillance area, we could look into the doorway in the center which was open.

Q I see. How far into the store could you see from your position that evening?

A I would say twenty to twenty-five feet.

Q Into the store?

A Into the store.

Q All right. Were you able to identify or to see any individuals inside that store prior to Mr. Williams and Trooper Steferson's arrival?

A Yes.

Q Who did you see in that store?

A Mr. Sostre and a female who I later learned to be Geraldine Robinson.

Q I see. Were you able to see these figures and to identify those figures from your observation point?

A Yes.

Q All right. Could you describe the general layout of 1412 Jefferson Avenue that evening in terms of the furnishings of the store?

A From where I could see into it far enough, that on the left side as you enter the store, there was a counter and we could see some books and records, phonograph records.

Q All right. You just testified that approximately 11:40 you saw Arto and Trooper Steferson approach this store.

A Yes.

Q All right. What next transpired?

A. They entered the bookstore and a few minutes later they both came out, stood in the doorway and Arto went back into the bookstore. Trooper Steferson remained in the doorway looking into the bookstore.

Q All right. If you can, would you be able to determine, from your position, whether Trooper Steferson was able to see into the store from his position?

MR. CHEVIGNY: Objection, your Honor.

THE COURT: I will sustain the objection.

MR. CREAM: If your Honor please, Mr. Steinmetz was in a position overlooking the entire surroundings. I think he, from that position, is able to testify whether he could or could not determine the angle of view of a person within his own vision, especially in relation to the store which was likewise within his vision. My question is directed to determining whether there were any obstructions which he could observe.

THE COURT: I will let you ask about obstructions but what he could see or how far he could see into, that would be something that it would appear to me from his vantage point, he would not know.

BY MR. CREAM:

Q All right. Mr. Steinmetz, from your position, could you determine whether there were any obstructions hindering Trooper Steferson's point of view?

A No, there weren't.

Q Were there any obstructions hindering your point of view?

A No, sir.

Q All right. Were you able to look into the store?

A Yes.

Q Were you able to look into the store even with Trooper Steferson standing in the doorway?

A Yes.

Q All right. Would you testify, would you describe to the Court, as best you can, what you saw after Trooper Steferson came out and stood in the doorway?

A I could see Arto in the store and the female and Martin Sostre, but what transpired I could not see with my naked eye from that area.

Q When were you able to, with your naked eye observe hands, that is, could you make out a hand belonging to any of the occupants of that store?

A Not too well, no, sir.

Q All right. What then transpired after Mr. Williams went back into the store and Steferson stayed outside.

A A few minutes later, Arto Williams came out, joined

Tooper Steferson and they walked to the corner of Jefferson and Woodlawn and crossed Woodlawn out of our sight.

MR. CREAM: Okay. I have no further questions.

CROSS EXAMINATION BY MR. CHEVIGNY:

Q Mr., - Officer Steinmetz, in July of 1967, what was your general assignment for the New York State Police Department?

A Bureau of Criminal Investigation.

Q Are there any divisions within the Bureau of Criminal Investigation?

A Were there, no.

Q You did generally - -

A Criminal work, yes.

Q Did you have some particular job for the Bureau of Criminal Investigation of any sort?

A No. I was stationed at Athol Springs at the time working just for the Burea of Criminal Investigation.

Q Had you ever worked in cooperation in the investigation of a case with the Buffalo Police Department before?

A Yes.

Q How many times?

MR. CREAM: Objection, your Honor, on the grounds of relevancy.

THE COURT: Overruled. Whether it is or not, we will find out.

THE WITNESS: I don't recall how many times, but I had worked with them before.

BY MR. CHEVIGNY:

Q Had you ever worked, - who assigned you to work on this case?

A Captain Williams.

Q Henry Williams?

A Yes.

Q Did you have any sort of discussion with Henry Williams about it?

A A discussion with him, sir?

Q Concerning the assignment, did he tell you anything about it?

A Yes. He advised us what the - -

Q What did Henry Williams tell you about it?

A That there was a narcotic investigation and that we were to be at a surveillance post there to observe what was going on in the, - in that area.

Q Did he tell you anything else?

A I don't recall anything else.

Q Did he tell you who to look for?

A Yes. We had a picture of Martin Sostre.

Q About when did Captain Williams give you that assignment?

A Probably four days, five days prior to the 14th.

Q Did you have any conferences with any members of the Buffalo Police Department concerning this case?

A No, sir.

Q Were there any members of the Buffalo Police Department present at any meeting with Captain Williams, if you recall?

A Not any that I was at.

Q You were told this was a narcotics investigation?

A Yes, sir.

Q Had you ever worked, - have you ever worked before that time in connection with a narcotics investigation in cooperation with the Buffalo Police Department?

A I had assisted at some narcotic raids with the Buffalo Police Department.

Q Were you assigned to this post with other people?

A Yes, with Trooper Wilcox.

Q Anybody else?

A No, sir.

Q Now, I think you said you were in 1413 Jefferson, is that right?

A 1412.

Q Oh, 1412 is where you were looking at?

A Yes.

Q You were inside what building?

A. I don't recall. It was a building directly across the street, but I don't recall the number.

Q. What sort of an establishment was it you were looking out of?

A. We were on the second floor and it was empty offices.

Q. Empty offices?

A. Yes, sir.

Q. Was it directly across the street from the store?

A. It was to the right, just to the right of the center of the store.

Q. How many windows were there in the office you were looking out of?

A. There were three separate offices. There were three separate rooms in this part that we were in and we were in the center one.

Q. You were in the center one?

A. Yes, sir.

Q. Was that one also slightly to the right of the doorway of 1412?

A. Yes, sir, facing it, slightly to the right.

Q. Now, were you and Mr. Wilcox, Officer Wilcox looking out of the same window, or different windows?

A. The same window.

Q. And Officer Wilcox had a camera, did he not?

A. Yes, sir.

Q Do you recall what kind?

A I don't know. It was a telescopic lense on it.

Q Was it a still or a moving camera?

A Still.

Q Now, I think you said that the windows were boarded up, is that right?

A The two main windows in the front were boarded up.

Q Where is the door in relation to the two main windows?

A In between.

Q In between, right?

A Yes, sir.

Q So there is a window on the left and a window on the right?

A Yes, sir.

Q Now, the counter that you describe, where is that in relation to the windows?

A As you enter the store, the counter is on the left-hand side.

Q So the window which was boarded up is in front of where the counter was, is that right?

A Partially, yes, sir.

Q And there are also windows which lie on an angle to the street which go as far as the door, is that right?

A Yes, sir.

Q And were they boarded up, if you recall?

A I don't recall whether they were or not.

Q And the door was open, I take it?
A Yes, sir.
Q The store was lighted, I take it?
A Yes, sir.
Q Now, you stated that you could see the counter through the door from the window you were in, is that right?
A Yes, sir.
Q And you state that you could see Geraldine Robinson and Martin Sostre inside the store through the doorway, is that right?
A Yes, sir.
Q And you state you could see twenty-five feet into the store, is that correct?
A About twenty to twenty-five feet, that is correct.
Q Now, can you tell us where Louis Steferson was standing after he came out of the store? You told us that he went in the store and came out. Where was he standing?
A He was standing in the side, like right in front of the windows. In other words, the - -
Q I think I understand.
A The well going through, he was in the front part and standing to the left as we faced it.
Q To the left?
A To the left, rather than right in the center of this well going into the back.

Q So that his line of vision went toward the right, isn't that right, into the store?

A Well, I don't mean to the left far enough that he was that his vision was obstructed by the boarded-up front windows.

Q Well, he wasn't standing directly in front of the door, is that right?

A No, sir.

Q He was standing far enough to one side or the other so that you could see in there, is that right?

A Yes, sir.

Q If he had been standing directly in front of door, would he have been standing in your way?

MR. CREAM: Objection to the hypothetical question.

THE COURT: Overruled.

THE WITNESS: Partially.

BY MR. CHEVIGNY:

Q And he was standing far enough to the left so that he wasn't in your way, isn't that right?

A He wasn't in our way.

MR. CHEVIGNY: That is all, your Honor.

MR. CREAM: No redirect, your Honor.

THE COURT: Thank you. Mr. Cream, you have one more witness?

MR. CREAM: No, your Honor. I have three more witnesses.

THE COURT: Three more. Then I think in that event we better break the testimony. Tomorrow at 11:00 a.m., tomorrow morning.

MR. CHEVIGNY: Your Honor, I would like to find out now, - I have two, - I have one enormous and one sizable transcript. I have prepared a lot of cross examination. I would guess who some of the witnesses are, but I would like to know who the witnesses are so that I can properly prepare.

MR. CREAM: I am sorry, I don't feel - -

MR. CHEVIGNY: We gave the names of our witnesses. This is not a game now.

THE COURT: Mr. Chevigny, let us take one thing at a time.

MR. CHEVIGNY: All right.

THE COURT: Mr. Cream, I believe that the fair procedure here requires that we have the names of the witnesses. There is no secret in this case, certainly. Do you have the names of these officers?

MR. CREAM: Yes, your Honor. I have most of them. There is one officer who I have

still not been able to contact. I don't know whether he is going to testify.

THE COURT: The ones that you know will be here.

MR. CREAM: I will be glad to give counsel the ones that I know.

THE COURT: Who are they?

MR. CREAM: They will be Trooper Stefanson; Trooper Wilcox; I believe that Trooper Tom Constantino will testify. I am not sure about Trooper Constantino. If he does not, then I will have to get somebody in his place to testify.

THE COURT: Trooper Constantino, and what information, generally, does he have?

MR. CREAM: He executed the search warrant that evening.

THE COURT: I see.

MR. CREAM: And he found what later proved to be heroin in the back room of the Martin Sostre bookstore.

THE COURT: If he isn't available, there is someone else who was there at the time.

MR. CREAM: Yes, sir.

THE COURT: That is the general nature of his testimony?

MR. CREAM: Yes.

THE COURT: Anything further before we recess for the evening?

MR. CHEVIGNY: No, your Honor. We would object to the relevancy of Trooper Constantino's testimony to the sale charge, but I will save that for tomorrow.

THE COURT: All right. Very well. Spectators, please remain in your places. We will be in recess until tomorrow morning at 11:00 a.m. Mr. Hoffarth, you may walk out with Mr. Sostre. We will be in recess.

(Proceedings hereupon recessed at 4:27 p.m.)

* * * * * * * * * * * * *

PROCEEDINGS: May 31, 1973, 11:20 a.m.

APPEARANCES: As before noted.

THE COURT: Mr. White has called to my attention that perhaps some of the ladies and gentlemen who are jurors in the criminal case which is presently pending before me have come up to the Court and now are spectators here. In the usual case, I would say you would be welcome to stay. However, I think it would be best in this situation, that you are right in the midst of a case where a man is accused of smuggling drugs, that you do not stay. Certainly, there is no relation factually between the hearing which we have going on now and the facts in the Mazziotti case, but I would appreciate it if there are any jurors here that you do not remain. Come back at 2:00 o'clock this afternoon, please. Mr. Cream.

MR. CREAM: Yes, your Honor. Thomas Constantine.

T H O M A S C O N S T A N T I N E (State Campus, Albany, New York), a witness called by and in behalf of the respondents,

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CREAM:

Q Mr. Constantine, are you currently employed?

A Yes, I am.

Q By whom are you employed?

A New York State Police.

Q And in what capacity are you so employed?

A I am currently a lieutenant in charge of recruit training for the New York State Police.

Q How long have you been a member of the Division of the New York State police?

A Approximately eleven and one half years.

Q And would you describe briefly, please, Lieutenant, the training that you have undergone in the course of your training?

A Well, in addition to professional courses within the agency itself, at the financial support of State and Federal Government, I have a Bachelor's Degree in criminology, a Master's Degree in Criminal Justice and I have recently completed my requirements for a Ph.D. in Criminal Justice.

Q Lieutenant, were you employed by the Division of State Police on or about July the 15th, 1967?

A Yes, I was.

Q Can you briefly state the nature of your duties at that time?

A At that time, I was an investigator assigned to the BCI unit at the former Athol Springs station.

Q What is BCI?

A Bureau of Criminal Investigation.

Q All right. And did there come a time when you were assigned to cooperate with the Buffalo Police Department on a narcotics case?

A Yes, there was. A number of instances we cooperated.

Q Referring to the incident of your employment on July 15, 1967, were you asked to cooperate with the Buffalo Police Department?

A Yes. I believe it was a Friday. I can't recall the date exactly, but I know it was a Friday. I was called at home and told to meet with members of the State Police and the Buffalo Police at the Buffalo Police Headquarters.

Q Were you told what your duties were to be that evening?

A No, not at that time, no.

Q I see. When were you told what your duties were to be?

A Well, when I arrived at Police Headquarters, I understood there was a raid on Jefferson Avenue and I was to parttake in the raid.

Q Were you told the address on Jefferson Avenue?

A I can't recall if I was told the address that night or not.

Q All right. Were you told the identity of the suspects or what was going to be done that evening?

A Yes. I was told that there was a bookstore located on Jefferson Avenue and there would be an attempted narcotics purchase and also perhaps the execution of a warrant, a search warrant.

Q I see. Were you told whether a search warrant was issued?

A I can't recall.

Q Now, going to approximately 12:15 or 12:10 a.m. on the morning of July 15, 1967, did you join the company of other officers?

A Yes. I was driving a State Police car and there were a number of Buffalo Police and State Police officers in my car at that time.

Q I see. Were you informed at that time that a search warrant had been issued for the premises?

A Yes. I was told that there was a search warrant.

Q What was the identity of the other officers who joined you that evening, if you recall?

A The only one I can remember is Senior Investigator Al Rock, is the only one I can really recall.

Q All right. After these other police officers entered your car, what did you do next?

A Well, we were driving around the area of Jefferson and Woodlawn, Ferry Street and then we were told to proceed

to the location. I can't recall who told us, but we pulled up in front and as I was parking the car, the officers who were in my car ran into a store there that was about two doors in from Woodlawn, I believe it is.

Q I see. Did you accompany those officers?

A After I parked the car. They were a little bit ahead of me.

Q I see. When you entered the premises, what did you see?

A As I was coming in the doorway, I could see the people who were in my car. Like I say, Rock is the only one I can recall at this time. He was out in front. I heard him yell "Police officer", and then I saw, looking in the store there is a partition on the right-hand side as you look down and I saw, - it looked like someone come from the side and it looked like Rock was knocked down and then there was a general scuffle in the back room and I proceeded there.

Q The individual you believe knocked down Investigator Rock, do you see him in the courtroom this morning?

A Yes, I do.

Q Who is he?

A It is Mr. Sostre sitting there in the dungaree jacket.

Q Now, after you observed the scuffle, what did you do next?

A Well, as I was standing around there, and finally, they handcuffed him, I believe they took him out to the front

area of the store and there were officers in the front area also and we started to search the back room of the store.

Q What were you searching for?

A Narcotics, I assumed.

Q All right. Did you discover anything in your search in the back room?

A In the course of the search in the back room in a filing cabinet, we located on the, - next to the wall on the left-hand side, I guess the southwest wall, the best I can recollect the directions of the city anyway, and in the top drawer there I found a bunch of glassine envelopes in a rubber band.

Q Do you recall approximately how many glassine envelopes were there?

A About, - I think it was about nine or ten of them.

Q All right. Was there anything inside those glassine envelopes?

A It appeared to be a powdered substance.

Q What color was the powdered substance?

A Appeared white to me.

Q Do you know whether there was a subsequent laboratory analysis done of that white powder?

A I really don't know myself because I don't know who would have taken it to the laboratory. I didn't take it

to the laboratory.

Q Okay. What did you do after you discovered these nine or ten glassine envelopes?

A Well, there was a number of people, especially people who would have been more familiar with narcotics than myself who looked at it and I kept it in my own possession in my suit coat pocket or pants pocket, I believe, and when I got downtown to the police headquarters, I turned it over to Ronnie Smith, the detective sergeant on the Narcotics Squad, Buffalo Police Department.

Q Okay, and what did you do after that?

A That was it.

Q All right. Now, Lieutenant, as best as you can, will you describe the physical layout of the bookstore, especially with relationship to this room in which you found the nine or ten glassine envelopes?

A As you go into the store, there is like a regular business section and I think there was a counter like on the left-hand side as I was going in, and as I say, as I recall, there was like a partition on the right-hand side separating that particular section of the store from what must have been like an office section or something. I think there was a wash basin back there also.

Q And was it in the office section that you found the filing cabinet?

A Yes, what I assumed to be an office section, right.

Q It was a room separated by a partition from the main business section, is that correct?

A. Yes, sir.

Q All right, and this is the filing cabinet in which you found the white, - the glassine envelopes containing the white powder?

A Yes, sir.

MR. CREAM: You may cross.

MR. CHEVIGNY: Your Honor, at this time, I move to strike this witness's testimony on the grounds that it is entirely irrelevant to this proceeding. This proceeding is with respect to a habeas corpus on a conviction for a sale of drugs. This witness testified he broke into the store with some other officers on the 15th of July and they searched a filing cabinet and he found a white powder, which doesn't have anything to do with the sale of drugs.

THE COURT: Let me ask you this, Mr. Cream, did Mr. Constantine testify at the trial?

MR. CREAM: He did, your Honor.

THE COURT: Was his testimony substantially the

same?

MR. CREAM: Today, as it was then?

THE COURT: Yes, in general.

MR. CREAM: Yes.

THE COURT: That record is here in evidence, isn't it?

MR. CREAM: It is, your Honor.

THE COURT: Is it necessary for me to rehear all the witnesses who testified at the trial?

MR. CREAM: Your Honor, we will not be presenting all of the witnesses. However, the question arises here of credibility of the witnesses. I think the Court is entitled to - -

THE COURT: If there is any additional point which you think should be made, certainly I will listen to it. It is subject to be connected up.

MR. CREAM: We will certainly make that connection, your Honor.

THE COURT: I will overrule your objection.

CROSS EXAMINATION BY MR. CHEVIGNY:

Q Now, Officer Constantine, you state that you had not, - that you had no connection with this case before the

night that you were asked to go on the raid, is that right?

A. Right. In fact, I knew there was an investigation going on, but - -

Q. You knew there was an investigation going on concerning Martin Sostre, is that right?

A. No, I didn't know it was a narcotics investigation going on. I wasn't sure who it was. At that time, to make it a little clearer, at that time, there were no State Police Narcotic Units and I think they were started one year after the raid and those people who had been involved would have been, I think, Investigator Rock and members of the Buffalo Police Department, but I wasn't actually involved in it myself. I don't know whether that makes it any clearer.

Q. You heard something about this particular investigation, this particular narcotics investigation, is that right?

A. I knew there was a narcotics investigation going on in Buffalo and I didn't know the man's name. I knew it was in the Jefferson Avenue area.

Q. Who had you heard about that from?

A. Well, I really can't say who it was. At Athol Springs at that time there were nine of us stationed there and there were conversations that would go on back and forth and I was working my own cases, burglaries, larcenies,

robberies, and I just heard the conversation.

Q You don't remember who you heard it from?

A No, sir, I don't.

Q Do you remember the substance of it?

A The substance of it was that I knew there were people going down there on surveillances.

Q I see. Now, I think you told us that you were briefed by somebody the night of the 14th or early in the morning of the 15th, concerning what you were to do, is that right?

A Yes, sir.

Q Now, were you briefed at all at Athol Springs at the State Police office?

A No, sir.

Q You were briefed entirely at the Buffalo City Police office, is that right?

A Yes, sir.

Q And who spoke to you there?

A I can't recall because it wasn't like a briefing. I think that if you say "briefing", you get the idea that someone is instructing you how to do something. I think it was more or less conversational and I got the idea that those people, those other people, who were there, members of the Buffalo Police Department and that, were familiar with the investigation and they were talking about it in

that type of tone.

Q Do you remember who they were?

A I know there was Detective Sergeant Gristmacher was there at that time; Sergeant Smith. I can't remember whether Chief Amico was there or not.

Q You stated on your direct that you were told there would be an attempted narcotics purchase?

A Yes, sir, I heard that.

Q Do you know who said that?

A I really couldn't recall.

Q Would it refresh your recollection if I mentioned the name of Alvin Gristmacher?

A I really couldn't recall. I know he was there. He probably was the people, - you know, they were more familiar with it at the time I was there and they were there talking, but if I said I knew -- -

Q But do you recall who did most of the talking?

A I think it would be Sergeant Gristmacher.

Q All right. Now, there were, - you say when you drove your car down to Jefferson Street, there were other officers in it, is that right?

A Yes, sir.

Q And the only one you remember is Officer Rock who is a State Policeman?

A Yes, sir.

Q Were the City Policemen in your car too?
A Yes, sir, I believe so.
Q Now, at the time of the conversation at the State Police Headquarters about that ongoing narcotics investigation, did you hear anything about the riot in Buffalo?
A Yes, sir. If reference to the narcotics investigation?
Q Well, let's take it first, did you hear anything about an investigation of the riot by the State Police?
A No, sir. It seems to me that there were simultaneous. There was talk about the riot, there is no doubt about that.
Q Was there talk about an investigation of the riot?
A No, sir.
Q Now, you somewhat described the store for Mr. Crean. About how long, - do you recall, - I know it is a long time ago, but do you recall about how long this store was up to that partition, if you recall?
A Yes.
Q If you don't recall - -
A Yes, that is the position I am in. I can't really recall.
Q All right. Do you remember a counter in the store as you come in the store?
A As I say, the best I can recall would be like a counter-like arrangement on the left-hand side.
Q And you found the filing cabinet that you found behind

that partition, is that right?

A. Yes. In, - If you are talking about a line to mark the store off, yes, but I think the partition is only on the right-hand side, as I recall. I don't know if it is on the left-hand side. In other words, the filing cabinet that I saw was on the left-hand side of the building and as I see it now, the partition was on the right side.

Q. And the filing cabinet was toward the back of the store, am I right?

A. Yes, sir.

Q. And you say you found the drugs in a drawer of the cabinet, is that right?

A. Yes, sir.

Q. Did you find anything else in the drawer?

A. In the room?

Q. In the drawer, if you recall.

A. In the way of contraband?

Q. No.

A. Or anything else?

Q. Did you find any other contraband?

A. No, sir.

Q. Did you find anything else?

A. Yes, sir, it was full.

Q. Full of what?

A. Looked like papers, business papers and things like that.

Q Did you have to page through those papers in order to find the drug?

A No. I just was moving stuff around and some of it was like stapled together and other stuff was loose and I paged through it.

Q You picked up some of the papers and the drugs fell out, is that the idea?

A I saw them there in the drawer, as I recall. I can't recall, you know, exactly where they would be situated but I remember it was in that drawer and there was a lot of papers.

Q Can you describe the papers at all with regard to their age or their appearance; did they look like old papers, new papers?

MR. CREAM: Objection, your Honor. This is entirely irrelevant.

THE COURT: Overruled.

BY MR. CHEVIGNY:

Q Yes, I agree, but for different reasons.

A No, sir, I couldn't.

Q Now, you were there during, - at the time you arrived, other officers had already gone into the store, is that right?

A Yes, sir.

Q Did you, during the time you were in there, did you hear

Mr. Sostre say anything?

A. It seemed to me that he was yelling. He was yelling at some of the officers. Exactly what the words were, I don't know.

Q. Did you ever show him the drugs you had taken?

A. I can't recall whether I did or not.

Q. And you don't recall also whether he said anything about the drugs you had taken?

A. No, sir.

Q. Did you put the drugs in your pocket and take them downtown?

A. Yes, sir.

Q. To Sergeant Smith?

A. Well, I gave them to him downtown.

Q. I beg your pardon?

A. I gave them to him downtown, but I kept them in my pocket.

Q. You put them in your pocket in the store?

A. Yes, sir.

MR. CHEVIGNY: All right. That is all, sir. Thank you very much.

MR. CREAM: I have no redirect.

MR. CHEVIGNY: I renew my motion to strike his testimony because it isn't relevant.

THE COURT: Motion denied.

MR. CREAM: Your Honor, before I call my next

witness, do I understand from the prior exchange from the Court that the transcript which relates to Trooper Steferson's testimony that he went into the store with Williams, that he heard Williams ask Sostre if he could cop a bag; he saw Sostre hand Williams a glassine envelope and the testimony of Trooper Wilcox who also testified at the trial that he was able to observe from across the street Williams and Steferson entering the store; Sostre going into the back of the store, coming forward and handing to Williams something and that Williams thereafter placed whatever it was in his pocket, is all going to be considered as evidence by the Court from the transcript?

THE COURT: If you have correctly related, Mr. Cream, what the substance of the testimony was, it appears to me in a habeas application the Court does, in every case, consider the record.

MR. CREAM: In that event, your Honor, we have nothing further to add. The testimony of these witnesses would be merely cumulative

and we rest at this point.

THE COURT: Mr. Chevigny, can you wait just a minute. Are the witnesses here?

MR. CREAM: Yes, sir.

THE COURT: And are available?

MR. CREAM: They are here, yes.

THE COURT: All right. Mr. Chevigny, you want to make a statement?

MR. CHEVIGNY: Can I just have a couple of minutes recess to confer?

THE COURT: Yes. We will take a brief recess and, Mr. Chevigny, when you are ready, please would you let Mr. White know.

MR. CHEVIGNY: Thank you very much.

(Recess taken at 11:42 a.m.)

* * * * * * * * * * * *

PROCEEDINGS: After recess, 12:01 p.m.

APPEARANCES: As before noted.

THE COURT: Mr. Cream, after I stepped off the bench here, I began to, - there is no question about the fact that the record

of the trial is in evidence here has provided for in Section 2254. The situation here, though, is somewhat different than some habeas petitions in that in this case Mr. Williams said that he did not testify correctly or truthfully at the trial and, therefore, I don't know, I haven't read the record as to how he testified there. There was testimony about where, - whether certain people could see, look into the place and all that. There was also testimony about how he dealt with this package of narcotics and he claims that he left it in the seat and then he retrieved it later on so that it may be that there are some things which are important now which were not covered at the time of the trial, and if that is the case, we ought to make a record about those things.

MR. CREAM: May I have a moment, your Honor?

THE COURT: Yes.

MR. CREAM: Your Honor, then we call Trooper Louis Steverson to the stand.

THE COURT: All right.

LOUIS STEVERSON (Rochester, New York), a witness called by and in behalf of respondents, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION BY MR. CREAM:

MR. CREAM: Your Honor, by your prior statement, are you asking that we limit the testimony to new matters which were covered, or do you essentially feel that is what should be covered?

THE COURT: Of course, it seems to me that you should zero in on certain things. On the other hand, in order to get to that point, you might have to ask preliminary questions. Mr. Cream, you handle it anyway you desire.

MR. CREAM: Thank you.

THE COURT: If you want to question at length if you think it is necessary, do that. If you think you can get to the point right away, do it that way.

BY MR. CREAM:

Q Trooper, are you currently employed?

A. Yes, I am.

Q By whom are you employed?

A. New York State Police.

Q And how long have you been so employed?
A Thirteen years.
Q Were you so employed on July 14, 1967?
A Yes, I was.
Q All right. Trooper, did there come a time when you entered a motor vehicle on or about the evening of July 14, 1967?
A Yes.
Q Who were the other occupants of that motor vehicle?
A Detective Sergeant Gristmacher and Arto Williams.
Q I see. Would you describe, please, the type of vehicle in which you were riding?
A It was a 2-door coupe, General Motors product. I can't remember the type of car.
Q Very well. Did you sit into the front or into the back seat?
A I sat in the back seat.
Q You sat in the back seat. All right. Who sat directly in front of you?
A Arto Williams.
Q I see. After you entered the car, what did you do?
A We talked with Detective Gristmacher and Arto.
Q Did you drive around the City of Buffalo?
A Yes, we did.
Q For about how long a period of time did you drive?

A. Oh, approximately an hour or so.

Q. I see. From your position in the back of the vehicle, Trooper, were you able to observe the head and portion of shoulders of Arto Williams?

A. Yes.

Q. All right. Did you, at anytime during the hour or so of driving around the city observe Arto Williams bending over and reaching under the front seat of that vehicle?

A. No.

Q. Had he done so, Trooper, had he reached over and stuck his hand underneath the front seat of that car, would you have noticed that?

A. Yes.

MR. CHEVIGNY: I object to that.

THE COURT: I will overrule the objection.

MR. CREAM: Thank you. All right.

THE COURT: You can cross examine, Mr. Chevigny, about that.

BY MR. CREAM:

Q. Now, after you drove about the city for an hour or so, Trooper, what did you do next?

A. Well, we drove to the area of Dupont and Woodlawn.

Q. I see, and did there come a time when you entered a bookstore located at 1412 Jefferson Avenue?

A. Yes, there was.

Q Approximately what time was that?

A Approximately ten minutes to 12:00.

Q All right, and what did you do next?

A Upon leaving the car at the corner of Dupont and Woodlawn we walked down Woodlawn to Jefferson, went across the street to the bookstore. Arto Williams went in first and I was behind him. He approached Mr. Sostre in the store, asked him at that time if he could cop a bag.

Q Arto Williams asked who?

A Martin Sostre.

Q If he could cop a bag?

A Correct.

Q All right. What did Martin Sostre say?

A He didn't say anything right away. He kept staring at me.

Q Had you met Martin Sostre before this evening?

A No.

Q I see. Continue.

A At that time he said he didn't know who I was, he didn't know me and Arto said "Well, he is okay", you know, and he just shook his head.

Q Who shook his head?

A Martin Sostre.

Q All right. What happened next?

A Arto indicated that we should go outside.

Q Okay. Did you go outside?
A Yes.
Q And where did you station yourself?
A I stood right directly in front of the door.
Q I see. After you stood directly in front of the door, did you move either to the right or left of that door?
A I moved a little bit to the left of the door.
Q All right. Why did you do that?
A Knowing that there were officers across the street observing.
Q All right. What next transpired?
A Arto went back into the store and at that time, there was a female in the store who had come from the back of the store, walked up toward Arto and Mr. Sostre. At that time, Arto produced some money which he handed to the girl.
Q Were you able to observe the actual transfer of the money to the girl?
A Yes.
Q All right. Can you estimate, Trooper, approximately, how many feet from you Arto Williams was standing?
A Approximately between fifteen and twenty feet.
Q Would that be approximately from where I am to where you are now?
A A little closer. Approximately, yes. About there, yes.

Q All right. Continue.
A She, in turn, looked like she was counting the money.
Q All right.
A And then Mr. Sostre went into the back of the store and he came back out a couple of seconds later and handed something to Arto.
Q Were you able to determine what it was that he handed to him?
A It was a small packet, white in color, glassine.
Q It was a glassine envelope?
A Yes.
Q I see. You were able to actually observe Martin Sostre handing to Arto Williams a glassine envelope?
A Yes.
MR. CHEVIGNY: Oh, I object to that.
THE COURT: You object?
MR. CHEVIGNY: Yes.
THE COURT: That is leading and I will sustain the objection.
MR. CREAM: I will rephrase it.
THE COURT: You describe for us, Mr. Steverson, as Mr. Sostre was returning from the back of the store, what you saw him do and tell us, in your own words, what you could see as far as anything in his hand and

describe it, if he did.

THE WITNESS: When he came back from the back of the store, he walked up toward Arto Williams and he handed him a small object which was, from what I could see, a small glassine envelope, white in color.

BY MR. CREAM:

Q Trooper, I show you Defendant's Exhibit 1 for identification. Now, is this approximately the size and shape and color of the object handed from Martin Sostre to Arto Williams?

A That is approximately the size, that's correct, and the color, yes.

Q Let the record show I am holding the glassine envelope previously identified. All right. What happened after that?

A Arto took the object and placed it in his pocket and he left the store with his hand in his pocket.

Q Do you recall what pocket it was?

A I believe it was a right pocket, right-hand pocket.

Q And what happened next?

A We walked back across Jefferson to the car. I got in the back seat and he in turn handed this object over to Detective Sergeant Gristmacher.

Q Were you closer, - you were closer to him than you were

when you first observed the transfer?

A. Yes. I was in the back seat of the car.

Q. All right. Could you describe, as accurately as you can, what it was that Arto Williams then handed to Sergeant Gristmacher?

A. It was a white glassine envelope.

Q. Could you determine whether there was anything inside that envelope?

A. Detective Sergeant Gristmacher held it up so I could observe it and it was a white powdery substance inside.

MR. CREAM: I see. Thank you. I have no further questions.

CROSS EXAMINATION BY MR. CHEVIGNY:

Q. Officer Steverson, do I pronounce it correctly, is it Steverson?

A. Steverson.

Q. What was your general assignment at that time for the New York State Police Department?

A. Patrol

Q. Were you assigned to assist in the investigation of this particular narcotics case?

A. Yes, I was.

Q. When did you get that assignment?

A. Approximately a day before the assignment.

Q It would have been about the 13th of July?
A Around the 13th, yes.
Q Had you ever worked in cooperation with the Buffalo Police Department before?
A No.
Q Was your ordinary assignment in plain clothes?
A No, it wasn't.
Q Had you ever worked in plain clothes before?
A Yes, I had.
Q Who assigned you to work on the case?
A Pardon me?
Q Who assigned you to work on the case?
A Captain Williams of the BCI.
Q And he did that about the 13th, is that right?
A That's correct.
Q Was that assignment in writing or orally?
A Orally.
Q And what did Captain Williams say to you in substance, if you know?
A He called me on the phone at home and he asked me if I would be willing to assist the Buffalo PD and the State Police in a narcotics investigation in the City of Buffalo.
Q And I take it you said, "yes"?
A Yes.

Q And then what happened, what did he tell you? Did he tell you to do something?

A He told me where to go and who to meet with.

Q And what did he tell you?

A What did he say?

Q Yes.

A He said to go to the Buffalo PD, Buffalo Police Headquarters, and I didn't drive there and I can't remember who I did go down with.

Q Did anyone say anything to you about the riots, anyone in the State Police say anything to you about the riots?

MR. CREAM: Objection, your Honor, to that question.

BY MR. CHEVIGNY:

Q All right. Did Captain Williams say anything to you about the riots?

A No.

Q Did you hear anything about a State Police investigation of the riots in the City of Buffalo during July, an investigation during July?

MR. CREAM: Objection, your Honor.

THE COURT: Overruled.

BY MR. CHEVIGNY:

Q Did you hear anything about a State Police investigation of the riots?

A. I heard about it, yes.

Q. Did you hear other State Police Officers discussing it?

A. Discussing the riot?

Q. Discussing the investigation of the riot?

A. No.

Q. You didn't?

A. No.

Q. And when you went to Buffalo Police Headquarters, whom did you see there?

A. The narcotics, - it was upstairs in the Narcotics Squad office and I met the narcotics officers. State Police investigators were there.

Q. What Buffalo Police Narcotics Officers did you meet?

A. If I can remember the names, it was Detective Sergeant Gristmacher, Detective Smith; I believe Ron Smith and the other names escape me at this time.

Q. And were you told what was involved in this case?

A. Yes.

Q. Who talked to you about it?

A. Ron Smith talked to me.

Q. Did Sergeant Gristmacher talk to you?

A. Yes, he did. He was involved in other things at the time.

Q. So it was chiefly Sergeant Smith who talked to you, is that right?

A. It was off and on, Smith and the other members of the

squad, yes.

Q Do you remember what, in substance, was said to you about this case?

A They mentioned the fact that I would be working with a subject by the name of Arto Williams and he was going to make the buy.

Q He was going to make a buy?

A He was, right.

Q Did they tell you that you were supposed to try to observe it?

A I was supposed to observe it, right.

Q So when you went to 1412 Jefferson, you expected to see a buy, is that right?

A I did see a buy, yes.

Q But you expected to see a buy?

A I expected to see a buy, that's correct.

Q Now, when you came out of the Police Headquarters, was Williams in the car?

A Yes, he was.

Q And was seated in the car, is that right?

A Yes.

Q He was by himself?

A I came down with another police officer, with Detective Gristmacher was standing by the car.

Q I see, and you drove around for quite a while, did you not?

A. Yes.
Q. You drove to a judge's house?
A. Yes.
Q. How long did you drive?
A. Oh, we drove approximately an hour, a little more.
Q. Did you talk to Sergeant Gristmacher at all during the trip?
A. Oh, yes.
Q. And did you discuss the case that you were going to work on?
A. Yes.
Q. Did you talk about Martin Sostre?
A. Not at any length. Of course, his name was mentioned.
Q. What did you talk about?
A. Well, we talked about where we were going, what my assignment was going to be, what Arto was supposed to do and we talked about a little bit of everything.
Q. And when you spoke to Sergeant Gristmacher, did Sergeant Gristmacher ever turn around? I take it Sergeant Gristmacher was driving?
A. Yes, that's right.
Q. Did he ever turn his head around to talk to you?
A. I can't really recollect.
Q. I see. And when you spoke to Sergeant Gristmacher, as you do when you speak to anyone, you turned your head

toward him to talk to him, didn't you?

A. Yes.

Q. And during the time that you were looking at Sergeant Gristmacher, - during the time you had your head turned toward him, you were looking at him, is that right?

A. Correct.

Q. Now, do you know for a fact that during one of the times that you had your head turned toward Sergeant Gristmacher that Arto Williams didn't duck his head down, do you know that for a fact?

A. Well, out of my peripheral vision, I could see him. The car wasn't that big.

Q. You are quite sure of that?

A. Yes.

Q. You saw him in your peripheral vision during the entire hour or more that you were driving around, is that right?

A. Yes. He was directly in front of me.

Q. Now, when you came into the store with Arto Williams, where was, - Now, whom did you first see when you came into the store?

A. Mr. Sostre.

Q. And did you see Geraldine Robinson when you first came in?

A. Not immediately; she was in the back of the store.

Q. I see, and when Mr. Sostre came forward, what is the first

thing that Arto Williams said?

A. "What's happening", or something of that nature.

Q. I see.

A. I can't recall.

Q. You can't recall what he said first?

A. Not exactly the first thing, no.

Q. Can you recall anything else he said?

A. He asked if he could cop a bag.

Q. Now, at the time that you first spoke to Mr. Sostre with respect to "Are you doing any business" and so forth, where were you? Were you in the front of the store, the back of the store, the middle or where?

A. We were both in the front of the store.

Q. Meaning you and Williams were both in the front of the store?

A. Correct.

Q. Where was Mr. Sostre?

A. He was to our left in front of us.

Q. Were you facing the back of the store?

A. We were facing the back.

Q. And so your back was to the street?

A. Correct.

Q. And did you see Geraldine Robinson at that time?

A. Yes.

Q. Where was she?

A She was in the back, in the rear of the store.

Q Now, when Mr. Sostre said that he wanted you to go out, you stepped outside, is that right?

A That is correct.

Q And Mr. Williams stepped out with you?

A Yes.

Q Did Mr. Sostre move, did you see him?

A I wasn't facing him when I was going out of the store.

Q And when you, - but there came a time when you turned around and faced into the store again?

A Correct.

Q Well, was Mr. Sostre in the same area?

A He was in the same approximate area.

Q And where was that?

A That was still about fifteen or twenty feet away from the front of the main door, standing by a cabinet, I believe.

Q And he was standing by a cabinet fifteen or twenty feet away from the door. I see. You had walked in quite a ways the first time, is that right?

A I hadn't walked any further than that.

Q So you walked in the fifteen feet?

A Fifteen or twenty feet.

Q And he was standing by that cabinet?

A A display case or something of that nature, he was standing there.

Q Was that a counter? Would you describe that as a counter?

A I would say so, yes.

Q And it is on the left side of the store, is it not?

A Correct.

Q Now, after you were standing outside the store, you saw Mr. Williams go up to Mr. Sostre again, is that right?

A That's correct.

Q And was Mr. Sostre still standing in the same place?

A He was still approximately in the same place, yes.

Q Now, describe the outside of the store, if you will, please?

A If I can remember correctly, some of the windows had been boarded up and there were various posters placed on them.

Q Well, all the windows were boarded up, were they not?

A If I can recollect, yes.

Q But the door was open?

A The door was open.

Q Now, you knew that there were surveillance people upstairs in 1413 Jefferson, did you not?

A Yes.

Q So you moved to the left so that they could see past you?

A Correct.

Q And the counter was on the left in the store, was it not?

A Yes.

Q Now, did Mr. Williams walk down to where Mr. Sostre was standing?

A He walked up to him and at that time Miss Robinson had walked up too, the woman in the store.

Q She came up from the back?

A She came from the back of the store.

Q You were not standing right in the doorway, were you? You were standing at the building line, is that right, which is about three feet from the door?

A Yes, that's correct. I was on the sidewalk.

Q Right, and slightly to the left of the door?

A Slightly to the left.

Q And there were slanting window frames which were boarded up, were there not?

A Yes, sir.

Q So that would mean that you were standing slightly within one of those window frames, isn't that right?

A I was on the sidewalk. I was directly in front of the door.

Q But you were to the left?

A Just a little to the left.

Q And so if they were fifteen feet in the store and you were three feet outside, you were about eighteen feet away, is that right?

A Approximately, yes.

Q And now, Mr. Sostre was facing the front of the store, is

that right?

A. Yes, he was facing me.

Q. And Mr. Williams went up to him, is that right?

A. That's correct.

Q. And you say you saw, - where was Miss Robinson standing in relation to Mr. Sostre?

A. She was coming toward both of them when I first got outside of the store.

Q. And there came a time when you say that Arto Williams handed her money, is that correct?

A. That's right.

Q. Where was she?

A. She was on his right.

Q. Whose right, Mr. Sostre's?

A. Arto's.

Q. Oh, she was on Arto's right, I see, and his back was to you, is that right?

A. His back was to me.

Q. And so he handed the money out like this with his right hand, is that right, to the person on his right?

A. That's right.

Q. And Mr. Sostre was on her right?

A. That's correct.

Q. And Mr. Sostre was still standing by that display case or counter, was he not?

A. When he, - when was this, when he passed the money to the girl?

Q. Yes.

A. Yes.

Q. Did he move after that?

A. They said something. I didn't hear what they said.

Q. And then what happened?

A. And then he moved to the back of the store.

Q. Did he ever come back to the front?

A. Yes, he did. He came back after a couple of seconds.

Q. Did he come back to the same place he was standing before?

A. The same area, yes, that's correct.

Q. And what happened then?

A. That's when I saw him pass this small object to Mr. Williams.

Q. Now, was he, - was Miss Robinson still standing there in the same place?

A. I can't remember where she was after this happened. I was concentrating on her during the money transaction and I was concentrating on Mr. Sostre when he came back from the back of the store and I didn't, - I can't remember where she was.

Q. Was Mr. Sostre facing you?

A. Yes, he was.

Q. And Mr. Williams had his back to you?

A He was at an angle, but his back was still toward me. I couldn't see his face.

Q Now he turned to his side, is that correct?

A No. His back was still toward me, but he was kind of kilted one way or the other.

Q Which way was he kilted?

A His left side was facing more toward me at an angle.

Q His left side was facing more toward you?

A That's right.

Q And you saw Mr. Sostre reach out toward him, is that right?

A He reached out toward him, yes.

MR. CHEVIGNY: Where is that exhibit?

THE COURT: The photo?

MR. CREAM: The glassine envelope, your Honor.

THE COURT: The envelope, all right.

BY MR. CHEVIGNY:

Q Now, you state that you saw this object passed by Mr. Sostry to Mr. - -

A Some object, yes.

Q Some object. Of course, you didn't see this object, I understand. You saw an object about this size and this color passed by Mr. Sostre to Mr. Williams, is that right?

A That's correct.

Q How long before that had Mr. Sostre said that he didn't want to do any business with you standing there?

MR. CREAM: Excuse me, Counselor, if you are finished with that, may I have it back?

BY MR. CHEVIGNY:

Q I'm not finished with it. About how long before had Mr. Sostre said he didn't want to do any business with you standing there?

A How long before he came back and passed the object?

Q How long between the time that you saw this, - excuse me, an object similar to Defendant's Exhibit 1 and the time that Sostre told you that he didn't want to do any business with you standing there?

A Approximately a minute, if that long.

Q Now, at the time the money passed, Mr. Williams was standing directly in front of Mr. Sostre, isn't that right?

A Well, Mr. Sostre was to his left.

Q He was to his left at that time as well?

A That's correct.

Q Both times?

A That's correct.

Q Now, you did see Mr. Sostre extend his hand to Mr. Williams, did you not?

A Yes.

Q And you did see Mr. Williams extend his hand to Mr. Sostre and you are quite sure that you saw a white small, white object pass between them is that right?

A A very small portion of a white glassine type object, yes.

Q I am going to read you a short portion, - first, I wonder if you would identify this. I better mark it first for identification.

(Petitioner's Exhibit Number 5 marked for identification.)

MR. CREAM: May I see it, please?

BY MR. CHEVIGNY:

Q Sure. Now, I am going to read you Paragraph 4 of this affidavit. I am going to ask you if that refreshes your recollection concerning this matter. First of all, I want you to look at it and tell me if that is your signature or is that a copy of an affidavit that you made?

A Yes, it is.

Q And did you make that affidavit on July 17, 1967?

A Yes, I did.

Q Did you make it before Alvin Gristmacher?

A Yes, I did.

Q All right. Now, I am going to read you Paragraph 4 and

ask you whether it refreshes your recollection, "The informant and I walked out of the store. The informant told me 'Stand in the doorway' and he went back inside. I stood in the doorway and saw the informant again approach Sostre and having conversation with him. I then saw the informant again approach a female, now identified to me as Geraldine Robinson and hand her some money. I saw her count the money and say something to Sostre. At this time, Sostre walked to the rear of the store, come back out and walked to the counter. He then extended his hand to the informant and the informant extended his hand to meet Sostre's. The informant left the store and joined me at the doorway."

A That's correct.

Q Does that refresh your recollection as to whether you saw a small white object pass or not?

A Yes, I did.

Q And you didn't put it in this affidavit, is that correct?

A That's correct.

Q Didn't you think it was important on July 17, 1967 to mention that you saw a small white object pass between their hands?

MR. CREAM: Objection, irrelevant and argumentative.

THE COURT: Overruled.

BY MR. CHEVIGNY:

Q Didn't you think it was important on July 17th, 1967 to mention that you saw a bag of heroin pass or not?

A A white glassine envelope passed between the two.

Q Didn't you think that was important?

A Yes, I did.

Q Did you mention it anywhere in this affidavit?

A No, I didn't.

Q Now, one more thing. You state that when Mr. Sostre was standing to Mr. Williams' left, Mr. Sostre was closer to the counter than Mr. Williams, was he not?

A Yes, he was.

Q And they were all standing pretty close to the counter, were they not?

A Right.

Q So Mr. Sostre must have been right next to the counter or almost right next to the counter, isn't that right?

A Yes.

Q And the counter is some, - the counter doesn't reach as far as the edge of the door, does it?

A I can't recall.

Q Or did it?

A I can't recall.

Q You don't recall whether it does or not?

A I can't recall, no, sir.

Q But you were standing to the left of the door, were you not?

A That's correct.

MR. CHEVIGNY: That is all. I am sorry, hold it.

MR. CREAM: I beg your pardon?

MR. CHEVIGNY: Hold it.

THE COURT: Mr. Chevigny wants to talk to his counsel for a minute.

MR. CHEVIGNY: Okay, nothing further of this witness. Thank you very much.

THE COURT: Mr. Cream. Mr. Steverson, just a minute. Do you have any questions?

MR. CREAM: Yes, I have, your Honor.

THE COURT: Mr. Cream has a question.

REDIRECT EXAMINATION BY MR. CREAM:

Q Trooper, before the evening of July 14, 1967, had you ever heard the expression "cop a bag"?

A Yes.

Q Can you estimate approximately how many times you have heard that expression?

A Prior to July 14th?

Q Yes.

A Maybe a hundred times.

Q Can you tell us in your experience as a police officer

what that phrase means?

A To buy a bag of heroin.

Q To buy a bag of heroin?

A Yes.

MR. CREAM: May I have a moment, your Honor? No further questions on redirect, your Honor.

THE COURT: All right. Nothing further. Mr. Steverson, thank you.

MR. CHEVIGNY: I have nothing further.

THE COURT: Mr. Cream.

MR. CREAM: Your Honor, that concludes the testimony that we have to offer relative to new areas. Investigator Wilcox's testimony at the previous trial fixes his observations and there would be no point in being redundant about that.

THE COURT: I see. Investigator Wilcox, so I can understand, he was with the witness prior to Officer Steverson across the street, is that it?

MR. CREAM: Investigator Wilcox was taking photographs and observing the goings on at 1412 Jefferson through a telephoto lense on that evening.

THE COURT: Very well.

MR. CREAM: And he was with Mr. Steinmetz, and we rest.

THE COURT: Mr. Chevigny, now that we have this, is there anything further or do you want to consult with your co-counsel and Mr. Sostre?

MR. CHEVIGNY: We don't have any further evidence, your Honor. We have a couple of points. I would like to offer this affidavit which was produced.

THE COURT: Is that part of the search warrant?

MR. CHEVIGNY: No. This was produced in response to the subpoena to the Buffalo Police Department. I would like to offer it as part of the record in connection with this matter in the same manner as the transcript of the trial.

MR. CREAM: No objection.

THE COURT: Mark it in evidence, please, Mr. White.

MR. CHEVIGNY: At this time, your Honor, due to the fact that Officer Constantine testified to having made a search subsequent to the alleged sale and he said that he was

informed he had a search warrant, the issue of the search warrant has been introduced here which - -

(Petitioner's Exhibit Number 5 received in evidence.)

MR. CHEVIGNY: We had originally thought to be not germane to this proceeding, but due to the fact the search warrant has been entered, - excuse me, - in view of the fact that the question of the search warrant has been raised, we have obtained a search warrant and there is an affidavit of Sergeant Gristmacher concerning information from reliable informants. Now, ordinarily, the search warrant wouldn't be, - the validity of the search warrant wouldn't be germane to this proceeding, but we think the validity of the search warrant has been raised in this proceeding now as to whether Officer Constantine made a valid search or not, and accordingly, we would call for a hearing as to the validity of the search warrant because I am, - well, I couldn't say I am certain because I am not certain of anything, but we feel - -

THE COURT: Mr. Chevigny, the longer I am here, the more I agree with you in that regard.

MR. CHEVIGNY: We feel, for example, in regard to if Arto Williams is not a reliable informant, then he is not a reliable informant and the police knew it. If there are other informants we would like to know their names so that we can have an inquiry concerning the validity of that search warrant and the reliability of the informant and accordingly, at this time, we would move for a hearing with respect to the validity of the search warrant, in which we would be able to inquire concerning the reliability of the informants upon which the people relied in their prosecution.

THE COURT: Mr. Chevigny, - Well, Mr. Cream, do you have something to say?

MR. CREAM: Your Honor, it is clearly not germane to the proceeding before the Court. There is a direct appeal pending which is yet to be perfected in the State Courts so there is no allegation anywhere in the petitioner's papers or anywhere

else that there was an unlawful search or seizure and the act of searching for the narcotics and the seizure of the narcotics is not before the Court. It is totally irrelevant and we would object to it.

THE COURT: That is still pending? Is it an appeal from a coram nobis?

MR. CREAM: From the judgment of conviction and it has not been perfected.

THE COURT: The judgment of conviction, and it has not been convicted. Mr. Schwartz.

MR. SCHWARTZ: Yes, your Honor. I am preparing the appeal. That issue is not in the appeal because it wasn't raised by Mr. Sostre. It can only be raised in a post-conviction proceeding. That's why it wasn't raised initially. The pending appeal has nothing to do with Mr. Chevigny's motion.

THE COURT: I couldn't see why it couldn't be raised in the appeal.

MR. SCHWARTZ: There was no motion to suppress, your Honor.

MR. CHEVIGNY: Having no counsel, there was no motion to suppress.

THE COURT: Of course, then we get back to the very essential rules, Mr. Chevigny and Mr. Schwartz, that before you can urge something here in this court, you have got to exhaust your remedies in the State Courts.

MR. SCHWARTZ: Of course, your Honor, and we are only responding to what Mr. Cream opened up.

MR. CREAM: Your Honor, I didn't open up the validity of the search warrant. I opened up the fact that there were drugs in the back room where Sostre went prior to the sale to Williams. If they wish to challenge the search warrant, the reasonableness of the search on a subsequent habeas corpus in this court, they certainly have the right to attempt to do so, but not at this proceeding.

THE COURT: I would think, Mr. Chevigny, the core issue in this proceeding was Mr. Williams' testimony.

MR. CHEVIGNY: Yes.

THE COURT: In support of that, Mr. Sostre testified. It would appear to me that

his testimony here in this court was, in some way to support the explanation made by Mr. Williams. Then Mr. Cream came along and, as I understand it, and this we are getting as far as issues are concerned, we are getting further and further removed from the heart of the matter, but he then put on Mr. Constantine's testimony to show part of Mr. Sostre's testimony was the fact that he didn't sell drugs to Mr. Williams or to any other individual and I suppose, Mr. Cream, the testimony of Mr. Constantine was offered to show that there were drugs available on the premises which would show, perhaps, that Mr. Sostre did not testify truthfully here.

MR. CREAM: That would be correct, your Honor.

THE COURT: So that is a side issue having to do with credibility. I do not think that under the circumstances that anything has been opened up here by the State on the question of the search warrant. If you want to attack the validity of the search warrant, you have an avenue to do that and I think under the circumstances it should be done, and under the rules should be done in the State courts first. We are only here today because all the parties and the Court have agreed that as far as Mr. Sostre's remedy on Mr. Williams' claim, that they have been exhausted, his remedy was exhausted in the State court as far as that is concerned.

MR. CHEVIGNY: All right. Thank you, your Honor.

MR. CREAM: Your Honor, if I may respond to your last statement, as far as the exhaustion of remedies are concerned, we stipulated that for the purposes of having Mr. Williams come back to testify for the purpose of giving Mr. Sostre his day in court relative to the perjury or alleged

perjury by Mr. Williams, that he should be permitted to come back into Federal court to raise that issue. We feel quite strongly that in the absence of any testimony that the police officers or prosecuting attorneys were aware of the perjury and merely that the perjury did, according to their position, in fact occur, that would be properly an issue for the State court to determine. As far as the Federal due process requirements for the trial where if there was any possibility of an allegation that the State authorities were aware of the perjury, then we felt it only fair to have this forum in Federal court, but absent that allegation merely on the allegation of perjured testimony the State remedies certainly should be exhausted first.

THE COURT: It is sort of like having apple pie, Mr. Cream; you can't have the pie without the apples and here it seems to me that he couldn't exhaust the other remedy unless he had the testimony first in the State court.

MR. CREAM: I would be in agreement with that, and I also point out as a practical matter that Arto Williams is currently in the State of New York and would be available for a writ of habeas corpus ad testificandum.

MR. SCHWARTZ: Your Honor, I am caught short here, your Honor. I was under the impression that the State had agreed with your Honor that it was not possible to bring Mr. Williams back except in a State court proceeding.

THE COURT: In a Federal court proceeding.

MR. SCHWARTZ: I am sorry. What I said, it was not possible to bring him back in a State court proceeding and that the only way to do it was in a Federal court proceeding. That was my understanding on the record all along, and that there was no exhaustion issue in this case on the issues explained by petitioner. Otherwise we wouldn't be here and we wouldn't have all of this testimony, so is that correct or is it not correct, as the Court just said --

THE COURT: As I understand it, Mr. Cream, that what happened was that an application was

made with Judge Bayger. Mr. Schwartz, if I am incorrect here, - an application for a writ was made to Judge Bayger on the claim, and with the statement from Mr. Williams that he testified falsely at the trial. Then in the State court there was no power inthe State court to require the appearance of Mr. Williams in the State of New York. There was no practical way to get Mr. Williams from California to New York State.

MR. SCHWARTZ: There was no legal way as well as practical, your Honor. There is no power.

THE COURT: There was no power in the Court to require him to come to the Court, so that Judge Bayger after it was pending for some time without a hearing, then he dismissed the proceeding, is that right?

MR. SCHWARTZ: That's right, your Honor.

THE COURT: And then was an appeal taken to the Appellate Division?

MR. SCHWARTZ: No, because the District Attorney argued that there was no power and Judge Bayger said that them was no power and I agreed because the case was dismissed.

MR. NOTARO: Your Honor --

MR. CREAM: Your Honor, Mr. Notaro asks to be heard.

THE COURT: All right.

MR. NOTARO: It seems to me that there is an appeal pending and that is what raised my eyebrows here when I heard State remedies were exhausted. They are not exhausted.

THE COURT: That is a different issue.

MR. NOTARO: That is on the coram nobis and also from the direct judgment of conviction and without regard to that, your Honor, there could have been an appeal, if I am wrong, but it seems to me that there is. There could have been an appeal, so that if there is no appeal pending it was because they chose not to exhaust their State remedies. They didn't come over here as an alternative to going to the Appellate Division.

THE COURT: Mr. Notaro, on the state of the record before Judge Bayger --

MR. NOTARO: I was going to get into that also, your Honor. Judge Bayger said two things;

number one, it was impossible to bring Arto Williams in under the State law. Number two, assuming he came in and testified in the fashion that his affidavit indicated and in the fashion that he testified in this courtroom, based upon the testimony at the trial Judge Bayger would have found him unbelievable and incredible as a matter of law. That was the second basis of his decision in denying the writ. There were two bases.

THE COURT: Nevertheless, I want to make clear here and I think it is in the record in prior colloquy between counsel, and as far as I am concerned it is a stipulation, as far as the issue that we have heard the testimony on here, as far as Mr. Williams' testimony, that I find that he has exhausted, Mr. Sostre has exhausted his remedies in State Court.

MR. NOTARO: I am not going to quarrel about a stipulation that was entered into before I was here, but I would argue that it is not the position of the record in State Court, that they have not been exhausted.

THE COURT: As far as the remedies that he may have as to the validity of the search warrant and any other part of this trial, that is not before me and whatever remedies he may have in the State court he should pursue.

MR. NOTARO: That is something altogher. That is not what I am talking about. I am talking about there is still a remedy available for the denial of the writ of error coram nobis.

THE COURT: There may be but as far as I am concerned we have a stipulation in open court made by the representatives of the respondent here, and as far as I am concerned that is it as far as that part of the case is concerned. Is there anything further or do you want to take a break?

MR. CHEVIGNY: We have nothing further.

THE COURT: Anything further, Mr. Cream?

MR. CREAM: We have nothing further, your Honor, other than to formally enter the transcript of the trial in evidence.

THE COURT: Any objection to that, Mr. Chevigny?

Official
Exemp

MR. CHEVIGNY: No. May I look at it. Is it certified?

MR. CREAM: Oh, yes.

MR. SCHWARTZ: Your Honor, may we consult for a moment.

(Respondent's Exhibit Number 2 received in evidence.)

THE COURT: Mr. Notaro, Section 2254 talks about two things; it talks about, Section 2254(b), states an application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of State court shall not be granted unless it appears the applicant has exhausted the remedies available in the courts of the State or that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner. Mr. Notaro, I think that I really misstated the position here, in that it is on the second ground that we are here.

MR. NOTARO: There is no disagreement.

THE COURT: All right, but he has a right to be

here and have his petition heard. All right, Mr. Schwartz.

MR. CHEVIGNY: We think it would be most appropriate at this time to try to set a time for briefs, a very short time, your Honor.

THE COURT: It seems to me that under the circumstances that it would be most helpful to me to have the transcript and I find that Mr. Sostre is, under the rules, is entitled to have the transcript prepared and I will prepare such an order, and following the preparation of transcript, Mr. Knisley has some other orders from a Second Circuit, for example, in criminal appeals, which he's obliged to get out. As soon as I receive the transcript I will notify counsel and set a briefing schedule.

MR. CHEVIGNY: Your Honor, some of the people here have taken fairly extensive notes and in the interest of expediting this matter we wouldn't mind submitting a brief before the transcript is transcribed, although I understand you might not want to consider it before the transcript is finished.

THE COURT: If you want to do that, fine.

MR. SCHWARTZ: Can we have any projection at all of when there is a possibility of getting this hearing so that we can get a sense of the time frame, especially with the summer coming on and problems of schedules and the like.

THE COURT: Let me talk a minute with Mr. Knisley.

(Discussion had at the bench between the Court and the court reporter.)

THE COURT: We have a couple of criminal appeals. It depends upon whether we have to get them. We will talk to the clerk and see whether or not we have to get these in right away and we will let you know probably this afternoon, Mr. Schwartz.

MR. SCHWARTZ: That would be fine, this afternoon.

THE COURT: The evidence is closed.

MR. SCHWARTZ: Your Honor, we have an additional application about a problem that came up in connection with Mr. Sostre's being brought here and it is an embarrassing problem, but a very troublesome problem. Mr. Sostre, while in Clinton for the last few months, has refused on Constitutional

grounds to permit any rectal examination of him. That is not the issue pending here. In other words, it is not the issue I am raising now. Before he was brought here they insisted at Clinton that such an examination take place. He refused. He was therefore assaulted and quite seriously hurt. At the Erie County Jail just three days ago when he finally did see a doctor, he was taped up because of this assault. We would ask at this time, your Honor, that a protective order issue against any possible rectal examinations of him and any forcible attacks on him because Mr. Sostre is going back to Clinton, I take it, in the near future, and there has been a continuing history, so we are concerned that there may be such retaliation growing out of his testimony here and other kinds of things.

MR. CREAM: Your Honor, I would object to such a statement.

THE COURT: Mr. Schwartz, there is nothing before me. Anything you know, and he has been here for several days, - if there

is any lawsuit that should be filed there has been an opportunity to do it. There is absolutely nothing before me at this time and I will not consider, I will not make any statement one way or another on it. Just a minute, please. If you want to file something you can then file it and then I will consider it, but I have nothing before me. He is in the custody of the Marshal and in the general rule Mr. Sostre, as far as the Marshal's treatment, there are certain rules and regulations which they must follow and as far as I am concerned that Mr. Sostre will be treated just in the same manner as any other individual who they are required by law to move from one place to another and if you have any complaint which you feel should come to me, then you may do it, but I think that it ought to be done with notice to the appropriate, - whether it is the United States Attorney or to the Attorney General, with some notice to them.

MR. SCHWARTZ: Well, your Honor, this is in connection with this specific proceeding. We

are asking for it in the form of a protective order.

THE COURT: This is not part of this proceeding and again, Mr. Schwartz, if there is any complaint it should be made in writing with notice to the appropriate people and again, Mr. Sostre is entitled to the same treatment as any other individual. I know that he will receive it from the Marshal. Frankly, many times there are things which can be handled informally by meeting with the Marshal and if you will meet with Mr. Hoffarth or Mr. Ciofe I am sure it can be worked out.

MR. SCHWARTZ: Let me just correct one thing, in case there is a misunderstanding, that this is not a charge involving the Marshal. It is a charge involving the guards at Clinton Prison who took him from his cell.

THE COURT: Clinton Prison is not in my district and we have had this come up again and again. I have absolutely no power to act as far as individuals in Clinton Prison. That is something that can be taken up,

if it is a Federal case, which can be taken up with the judges in the Northern District. It is absolutely nothing I can deal with here in this court.

MR. CREAM: Your Honor, since that last statement of Mr. Schwartz is on the record, I would like to clarify that when Mr. Sostre left Clinton Prison I was informed by the superintendent at Clinton Correctional Facility that he in fact attacked several of the guards who were transferring him.

THE COURT: Mr. Cream --

MR. CREAM: I don't want to get into an argument on this, but it is on the record and the press are present and I want them to be aware of the other side of this allegation.

THE COURT: Very well. We will be in recess.

(Proceedings herein concluded at 1:04 p.m.)

I Hereby certify that this record is a true and accurate transcript from my stenographic notes in the proceedings.

E. F. Knisley
Official Reporter
U.S. District Court

* * * * * * * * * *

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel. MARTIN SOSTRE,

Petitioner,

-v-

FRANK M. FESTA, Superintendent of the Erie County Jail, and ROBERT J. HENDERSON, Superintendent of the Auburn Correctional Facility,

Respondents.

74-1520
CIVIL DOCKET
NO. 1972-237

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon the Affidavit in Support of Motion and Exhibits annexed hereto, the undersigned will move this Court at a Special Term thereof, to be held at the United States Court House, 68 Court Street, Buffalo, New York, on the 26th day of July, 1973 at 10:00 o'clock in the forenoon, or as soon thereafter as counsel can be heard, for an order admitting in evidence the Exhibits annexed hereto on the grounds as more fully set forth in the Affidavit in Support of Motion and for the additional relief requested therein.

DATED: Buffalo, New York
July 18, 1973

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Attorney General of the
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Attorney for Respondent Robert J.
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA
ex rel. MARTIN SOSTRE,

Petitioner,

-v-

*FRANK M. FESTA, Superintendent of the Erie County Jail, and ROBERT J. HENDERSON, Superintendent of the Auburn Correctional Facility,

Respondents.

CIVIL DOCKET
NO. 1972-237

AFFIDAVIT IN
SUPPORT OF MOTION

STATE OF NEW YORK)
COUNTY OF ERIE) SS.:
CITY OF BUFFALO)

DOUGLAS S. CREAM, being duly sworn, deposes and says:

FIRST: That he is an Assistant Attorney General of the State of New York, of counsel to LOUIS J. LEFKOWITZ, Attorney General of the State of New York, attorney for respondent Robert J. Henderson.

SECOND: That on the 29th and 30th days of May, 1973, a hearing was held before this Court on the petition for a writ of habeas corpus by petitioner herein.

THIRD: That upon said hearing Arto Williams testified in behalf of the petitioner.

FOURTH: That upon cross-examination said witness testified that he was in custody in Los Angeles County upon conviction of a felony to wit: sale of a dangerous drug - baby aspirin* (84).

FIFTH: That annexed hereto and offered in evidence is a copy of the Information (Exhibit "A"), and Felony Complaint (Exhibit "B"), in the case of the People of the State of California v. Arto Williams, wherein said Williams is charged with the violation of §11917 of the Health and Safety Code of the

*Number in parenthesis refers to page number of the transcript of proceedings of May 29th and 30th.

LAST | FIRST | MIDDLE | PRESENT ADDRESS | CITY & DATE OF BIRTH
AGE | HT. | WT. | HAIR | EYES | MARITAL STATUS | CHILDREN | MINOR | ADULT

State of California (sale of a dangerous drug - LSD).

SIXTH: That annexed hereto and offered in evidence as Exhibit "C" is a copy of the Minutes of the Judgment of Conviction of said Arto Williams for the crimes as charged in the Information and Felony Complaint.

SEVENTH: That upon cross-examination of the witness herein, said witness testified that he was presently in custody for a violation of probation which violation consisted of failure to report (84).

EIGHTH: That annexed hereto as Exhibit "D" and offered in evidence is a certified copy of an Arrest Report, dated the 13th day of September, 1972, indicating the arrest of said Williams for the violation of §11500 of the Health and Safety Code of the State of California (possession of Heroin), a felony.

NINTH: That annexed hereto as Exhibit "E" and offered in evidence is a certified copy of an Arrest Report, dated December 8, 1972, indicating that said witness was arrested for a violation of §11500 of the Health and Safety Code of the State of California (possession of Heroin), a felony.

TENTH: That annexed hereto and offered in evidence as Exhibits "F" and "G" are certified copies of Disposition Reports indicating that upon both of the above-referenced arrests said witness plead guilty to the violation of §647(f) of the Penal Code of the State of California (being under the influence of a restricted drug), a misdemeanor.

ELEVENTH: That annexed hereto as Exhibit "H" and offered in evidence is a certified copy of the Minutes of the Judgment of Conviction of said witness, dated January 10, 1973, for the violation of §647(f) of the Penal Code of California as a plea bargain down from the original charge.

TWELFTH: That upon cross-examination of said witness at the proceedings before this Court, said witness testified that he had not been arrested for felony charges in the State of

California subsequent to his initial affidavit recanting the testimony given before the State Court in March of 1968. (86)

THIRTEENTH: That annexed hereto as Exhibit "I" and offered in evidence is an affidavit signed by said witness recanting his testimony before the State Court in March of 1968 which affidavit is dated April 8, 1971.

FOURTEENTH: That upon the cross-examination of said witness in the proceedings before this Court, said witness testified that he was not being threatened, nor did he hear of any threats against his safety as a result of his testimony against Sostre at the State proceedings held in March 1968. (80)

FIFTEENTH: That annexed hereto as Exhibit "J" and offered in evidence is a copy of a letter dated September 13, 1970 to Mr. Barron (of the California Department of Probation) signed by Arto Williams, wherein he states that his life was in danger while he was in Buffalo as a result of his testimony against Sostre in March of 1968 and for that reason he left the City of Buffalo.

SIXTEENTH: That annexed hereto as Exhibit "K" is a letter dated October 9, 1970 to the Honorable Richard F. C. Haydan from John B. Walsh, Esq. setting forth as a matter of fact that Arto Williams was threatened by persons unknown and that his life was in danger in the City of Buffalo as a result of his testimony against Sostre in March of 1968.

SEVENTEENTH: That Exhibits "A", "B", "C" and "K" were received as part of the complete file in the Superior Court of the State of California in case number A223359 having been removed by your deponent from that file as the best evidence contained therein relevant to the issues before this Court and that the official certification which accompanied the entire file is annexed hereto as certification of those records.

EIGHTEENTH: That Exhibits "D", "E", "F", "G" and "H" were received under separate cover and are therefore individually certified by the Records and Identifications Division of the Los Angeles Police Department.

NINETEENTH: That Exhibit "J" was received under separate cover which included a Probation Report in the above-referenced matter in the State of California which Probation Report was removed for the submission solely of Exhibit "J". The official certification of Exhibit "J" is annexed hereto.

TWENTIETH: That for the convenience of all parties annexed to Exhibit "J" is a typewritten transcription of said Exhibit which transcription was prepared by the Office of the Los Angeles County District Attorney.

TWENTY-FIRST: That your deponent received these records commencing on or about July 2, 1973 and was therefore unaware of their existence prior to or during the proceedings before this Court.

TWENTY-SECOND: That the Exhibits annexed hereto bear directly upon the credibility of Arto Williams and show said Williams to have testified falsely before this Court in many instances.

TWENTY-THIRD: That the credibility of Arto Williams is in issue in this proceeding.

TWENTY-FOURTH: That in the interests of justice the Exhibits annexed hereto all of which, with the exception of Exhibit "K", would have been admissable into evidence upon the proceedings held before this Court on May 29 and 30, 1973 should now be admitted into evidence.

WHEREFORE, it is respectfully requested that this Court enter an order admitting into evidence in the Matter of United States of America ex rel. Martin Sostre v. Frank M. Festa, Superintendent of the Erie County Jail, and Robert J. Henderson, Superintendent of the Auburn Correctional Facility Exhibits "A" - "J" annexed hereto and further enter an order re-opening the above-entitled matter for an examination of John B. Walsh, Esq. relative to the statements made by him in Exhibit "K"

annexed hereto, and for such other and further relief as this Court may deem just and proper.

John J. Clark

Subscribed and sworn to before me
this 18th day of July, 1973.

Commissioner of Deeds, Buffalo, N.Y.
Commission expires December 31, 1974.

Official
Exempt

STATE OF CALIFORNIA,
County of Los Angeles

I, Clarence E. Cabell, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California for the County of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original

Complete File, in the Superior Court Case Number A223359, in the case of the People of the State of California vs. ARTO WILLIAMS.

on file or of record in my office, and that I have carefully compared the same with the original.

Executed and Seal of Said Superior Court Affixed at
Los Angeles, California

June 21, 19 73

Clarence E Cabell
County Clerk of the County of Los Angeles, State of California, and
Clerk of the Superior Court of the State of California
County of Los Angeles

STATE OF CALIFORNIA,
County of Los Angeles

I, A.J. McCourtney, Presiding Judge of the Superior Court of the State of California for the County of Los Angeles, do hereby certify that CLARENCE E. CABELL is County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California for the County of Los Angeles (which Court is a court of record, having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said CLARENCE E. CABELL as such officer; that the seal annexed thereto is the seal of said Superior Court; that said CLARENCE E. CABELL as such Clerk is the legal custodian of the original records or documents described and referred to in the foregoing certificate; is the proper officer to execute the said certificate and attestation, and such attestation is in due form according to the laws of the State of California.

Executed at Los Angeles, California

June 21, 19 73

A.J. McCourtney
Presiding Judge of the Superior Court of the State of California
for the County of Los Angeles

STATE OF CALIFORNIA,
County of Los Angeles

I, CLARENCE E. CABELL, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California for the County of Los Angeles (which Court, is a court of record, having a seal which is annexed hereto), do hereby certify that A.J. McCourtney whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Presiding Judge of the Superior Court aforesaid and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to said certificate of due attestation is genuine.

Executed and Seal of Said Superior Court Affixed at
Los Angeles, California.

June 21, 19 73

Clarence E Cabell
County Clerk of the County of Los Angeles, State of California, and
Clerk of the Superior Court of the State of California
County of Los Angeles

(U.S. Code (1958) Title 28; Section 1738-State and Territorial Statistics and Judicial proceedings, full faith and credit.)

76E621-CDB 12/70

CERTIFICATION OF EXHIBITS "A" "B" "C" and "K"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

The People of the State of California, Plaintiff,
v.
ARTO WILLIAMS,
Defendant.

S.C. No. A 252231
D.A. No.

INFORMATION

VIO. SEC. 11917, H&S CODE

The said ARTO WILLIAMS

is accused by the District Attorney of and for the County of Los Angeles, State of California, by this information, of the crime of VIOLATION OF SECTION 11917, Health and Safety Code,

a felony, committed as follows: That the said ARTO WILLIAMS

on or about the 7th day of November, 1969

at and in the County of Los Angeles, State of California, did willfully, unlawfully and feloniously agree, consent and offer to sell a restricted drug, to wit, lysergic acid diethylamide, and then did sell, deliver and furnish a substance in lieu thereof.

Filed in Open Superior Court of the State of California, County of Los Angeles, on motion of the District Attorney of said County.

DATED:

WILLIAM G. SHARP, Clerk

By

Deputy

EVELLE J. YOUNGER, District Attorney
for the County of Los Angeles, State of California

By

Deputy

GOLDSOUEL

cd

Exhibit "A"

IN THE MUNICIPAL COURT OF [illegible] JUDICIAL DISTRICT
COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

COMPLAINT
FELONY

THE PEOPLE OF THE STATE OF CALIFORNIA, Plaintiff.
v.
ARTO AILLIS,
11-20 FM Defendant.

NO. A252231

FILED

Personally appeared before me this 13th day of November, 1969
J. H. Lynn
of the County of Los Angeles who, being first duly sworn on oath, upon information and belief complains and says:

That on or about the 7th day of November, 1969, at and in the County of Los Angeles, State of California, the crime of VIOLATION OF SECTION 11917, Health and Safety Code, a felony, was committed by

ARTO AILLIS

who at the time and place last aforesaid, did willfully, unlawfully and feloniously agree, consent and offer to sell a restricted drug, to wit, lysergic acid diethylamide, and then did sell, deliver and furnish a substance in lieu thereof.

Said complainant therefore prays that a warrant may be issued for the arrest of the defendant who may then be dealt with according to law.

Subscribed and sworn to before me on [illegible]

[illegible]
Judge of the above entitled Court

Issued by EVELLE J. YOUNGER, District Attorney
By [illegible] Deputy

Bail recommended
$ [illegible]

WITNESSES [illegible]

CII No. (or other) [illegible]

[illegible]

ONLY COPY AVAILABLE

Exhibit "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

JANUARY 30, 1970 Department No. 103

RICHARD F C HAYDEN Judge M WYMORE Clerk

H KOGLER Reporter

APPEARANCES:
(Parties and Counsel checked if present.)
Counsel shown opposite parties represented.)

Case No. A252231

[X] Evelle J. Younger, District Attorney by D MC KEE Deputy

THE PEOPLE OF THE STATE OF CALIFORNIA

vs

[X] WILLIAMS, ARTO

[X] R. S. Buckley, Public Defender by I GARFINKEL Deputy

Cause called for trial.

The defendant(s) personally and all counsel waive jury trial, cross-examination and confrontation of witnesses. By stipulation of all counsel and the defendant(s) personally, the cause is submitted on the testimony contained in the transcript of the proceedings had at the preliminary hearing, subject to this Court's rulings, with each side reserving the right to offer additional evidence, and all stipulations entered into at the preliminary hearing be deemed entered into in these proceedings. It is further stipulated that any exhibits received at the preliminary hearing are deemed received in evidence in these proceedings, subject to this Court's ruling. People's exhibit #2 (transcript of the proceedings had at the preliminary hearing) is admitted in evidence by reference. The Court states that it has read and considered the transcript of the preliminary hearing.

People rest. Arto Williams is sworn and testifies on his own behalf. Defense rests. Kenneth Hornick is sworn and testifies for the People in rebuttal. Both sides rest. Cause is argued. The Court finds the defendant guilty as charged. Probation Officer's Report ordered. Probation and Sentence set for February 24, 1970 at 9:00 AM.

xx Remanded
Remain on bail
Bail exonerated
Released
Remain on own recognizance

PROB
MIN

THIS MINUTE ORDER WAS ENTERED
February 4, 1970
WILLIAM G. SHARP COUNTY CLERK AND CLERK OF THE SUPERIOR COURT

MINUTES

Submitted on preliminary transcript.

Exhibit "C"

[illegible]				
1412 W. WASHINGTON BL.		VEN		
M	BLK	6-9	161	11-6-37
LOVE		1412	ADS	
N.C. CAROLINA		VEN LARC		
VEH	X12	9-13-72	0215	0430
WASHINGTON BL. & LESTHILNTER				
11500 BLK (ROSS HEROTH)				

ADDITIONAL CHARGES (ON AND WARRS LIST NO., COUNT & PEN. INC. PA.)

GREENMAN

LOCATION CRIME COMMITTED: SAME

055-28-5147	N/V	BAKER
UNK ID		NONE

BRN SWEATER BLU PNTS BEIGE SHIRT	NONE
NONE	NONE
NONE	NONE

CODE: V - VICTIM (OR NAME OF BUSINESS) W - WITNESS OR JUVENILES ONLY: P - BOTH NATURAL PARENTS G - GUARDIAN

NAME	ADDRESS	CITY	PHONE	X
	RES.			
	BUS.			
	RES.			
	BUS.			
	RES.			
	BUS.			
	RES.			
	BUS.			

ADMONITION of RIGHTS (when applicable) THE FOLLOWING STATEMENT WAS READ TO THE ARRESTEE: *"You have the right to remain silent. If you give up the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to speak with an attorney and to have the attorney present during questioning. If you so desire and cannot afford one, an attorney will be appointed for you without charge before questioning."*

THIS ADMONITION WAS READ TO THE ARRESTEE BY (NAME & SERIAL NO.): [illegible] 16582

SERIAL NO.	REPORTING OFFICER(S)	SERIAL NO(S)	DIVISION/DETAIL	VACATION DATE
[illegible]	[illegible]	16582	[illegible]	
DATE IS REPORTED	DAY/CLEID			
[illegible]	[illegible]	16582		

USE CONT. SHEET OR NARRATIVE (AS PER INSTRUCTIONS ON BACK OF THIS PAGE) - - - - BELOW SECTION TO BE COMPLETED BY INVESTIGATOR

COMMENTS OF INVESTIGATOR: INCLUDE WHEN RETURNED, NAME OF AGENCY, AND PERSON ACCEPTING REFERRAL

THIS IS TO CERTIFY THAT I HAVE EXAMINED THE ORIGINAL OF THIS DOCUMENT AND FIND THIS REPRODUCTION TO BE A TRUE COPY OF SAME, MADE WITHOUT ALTERATIONS OR ERASURES.

By [signature]
RECORDS & IDENTIFICATION DIVISION
LOS ANGELES POLICE DEPARTMENT

☐ C & R ☐ Arrest Susp. ☐ Detect. Info. ☐ Info - Employee ☐ Info - Short Term ☐ Info - Other Agency ☐ 647f ☐ CFA ☐ Probation ☐ Other Law and Agency ☐ Juvenile Bur. (Juv.) ☐ Other ☐ Admits ☐ Denies

SER. NO. REV	ARREST PRESENT AT INTERVIEW	INTERVIEW DATE & TIME OF (In person)	SUPERVISOR APPROVING SER. NO.

LAPD 05.02.0 (1/72) ARRES. REPORT Exhibit "D"

NO. [illegible] People of the [illegible] vs. [illegible] ARTIS Ray WILLIAMS

PART NO. 2 | TITLE OF REPORT [redacted] | REPORTING NO. [redacted]1529 | ER NO.

SERIAL NUMBERS

[illegible] ADVISED HIM OF HIS RIGHTS BUT
[illegible] WISHED TO WAIVE ANY OF THEM. DEFT
WAS EXAMINED BY NDIC INVEST DETECTIVE 11807
A CERTIFIED FIVE EXPERT, A SCHEMATIC
DRAWING WAS MADE OF DEFTS HAND.
INVEST DETECTIVE EXPLAINED THE OPERATION
THE SCOPE INDICATIONS, PURPOSE &
OTHER SYMPTOMS DISPLAYED BY THE
VICTIM WHEN UNDER THE INFLUENCE
ILLEGAL INGESTIONS OF OR AN OPIATE,
THAT THE DEFT WAS UNDER THE
INFLUENCE OF SAME. (SCHEMATIC DRAWING
FOR FURTHER)

DEFT BKD 1500 HRS VEN JAIL
ON ADVICE OF INVEST DETECTIVE. DURING
INVEST AT VEN JAIL, OC DILATED PUPILS
APPEARED TO BECOME DROOPY, & DEFTS
HEAD BEGIN TO NOD. COLOR PHOTOS
TAKEN OF LT/DEFT BY VEN JAILER #
OIC DUNLOP # 14288 WIT BY STEPMOLLE 16463

THIS IS TO CERTIFY THAT I HAVE EXAMINED
ORIGINAL OF THIS DOCUMENT AND THAT
REPRODUCTION TO BE A TRUE AND CORRECT COPY
MADE WITHOUT ALTERATION.

By Sgt W D Smithel
RECORDS & IDENTIFICATION DIVISION
LOS ANGELES POLICE DEPARTMENT

IF MORE SPACE IS REQUIRED, USE CONT. SHEET, 15-09.0

[redacted] OFC ON SCENE
[redacted] OFFICERS. OFC
[redacted] WAS IN CIVILIAN
ATTIRE OFC IN FULL UNIFORM.

[redacted] OFC OBS DEFT DUCK DOWN
BEHIND (3) TRUCKS PKD W/SIDE OF
[redacted] AT INTERSECTION AS OFC
APPROACHED. OFC WALKED UP, WARNINGED &
[redacted] DEFT TO ASCERTAIN NATURE OF
PROB. AS OFC NEAR ARRESTED DEFT,
OFC REQUESTED I.D. FROM SUSP. AS DEFT
PRODUCED I.D., OFC NOTED OFC DEFTS
ATTEMPT TO WIPE CREAM & WHITE. OFC
NOTED THE PUPILS OF DEFTS EYES TO BE
EXTREMELY CONSTRICTED, MUCH MORE THAN
OFC NORMAL, OFC STERNOCLE. OFC NOTED
THE ODOR OF ALCOHOL ON DEFTS BREATH.
OFC ASKED DEFT IF HE WAS TAKING ANY
MEDICATION, TO WHICH DEFT SAID NO.
OFC FELT THERE WAS A POSSIBILITY DEFT
WAS UNDER THE INFLUENCE OF SOME
TYPE OF NARCOTIC & ASKED DEFT IF HE
USED DRUGS, TO WHICH DEFT REPLIED, "I
USED TO, BUT NOT FOR A WHILE." OFC
ASKED DEFT TO ROLL UP HIS SLEEVES, WHICH
HE DID. OFC OBS NUMEROUS SCABS ON
LT/ARM IN THE AREA OF THE INNER
ELBOW.

ARREST: OFCS FORMED THE OPINION
THAT THE ARM MKS & OTHER SYMPTOMS
EXHIBITED BY THE DEFT WERE CONSISTENT
W/THOSE OF A USER OF NARCOTICS. DEFT
BOOKED UNDER ARREST FOR 11500 H&S, &
TRANS TO MCJ. (DURING TRANS TO
MCJ, OFC ROGEL READ DEFT HIS CONST

If additional space is required, use reverse side. Continue on reverse side

THIS IS TO CERTIFY THAT THESE PAGES ARE A TRUE AND EXACT COPY OF THE ORIGINAL OF THIS DOCUMENT AND THAT THIS REPRODUCTION IS MADE WITHOUT ALTERATION OF ANY KIND.
By [redacted]
RECORDS & IDENTIFICATION DIVISION
LOS ANGELES POLICE DEPARTMENT

LAST	FIRST	MIDDLE	PRESENT ADDRESS	CITY & STATE OF BIRTH
[illegible] AKA			[illegible] W. MANCHESTER	LOS ANGELES 11-5-37

AGE	HT.	WT.	HAIR	EYES	MARITAL STATUS	CHILDREN: MINOR	ADULT
[illegible]	5-6	156	BLK	BRO	MARRIED	NONE	

OCCUPATION	WHEN LAST EMPLOYED	WHERE?	SCHOOL	AGE FIRST USED
[illegible]	9-8-72	[illegible] BROS 3RD ST	[illegible]	23

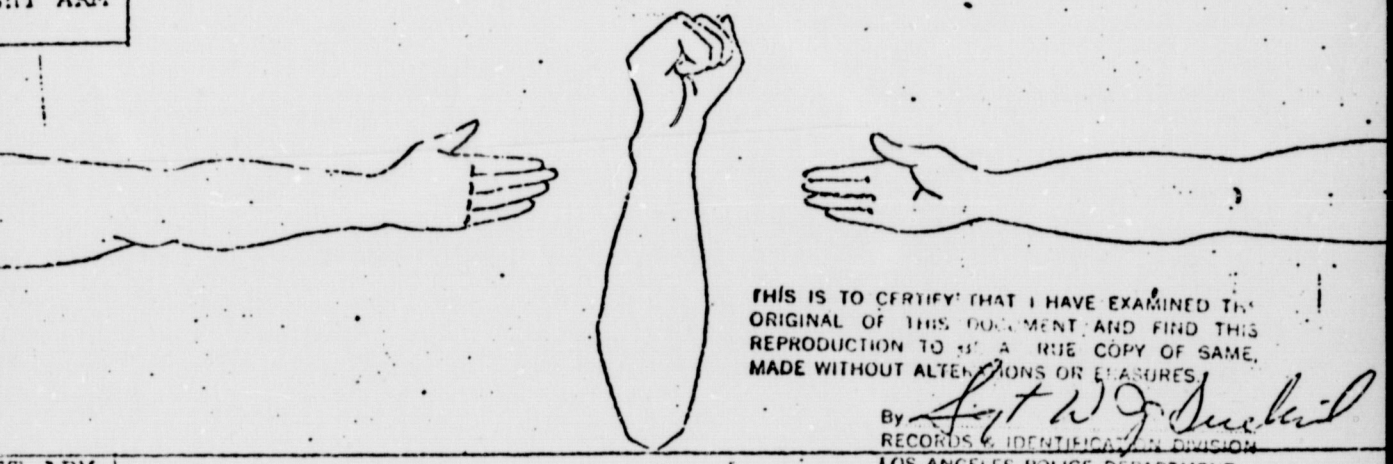
SCARS, MARKS, TATTOOS, DATE, LOCATION	DATE/TIME/LOCATION INTERVIEW	TYPE DRUG FIRST USED
[illegible] DATE LONG TOWN ST	9-13-72 0400 VENICE DRS	HEROIN

IDENTIFICATION LAST FIXED	AMOUNT	COST	CLOTHING
REFUSED	REFUSED	REFUSED	BRN SWEATER BLU PANTS

COMMENTS:

REFUSED

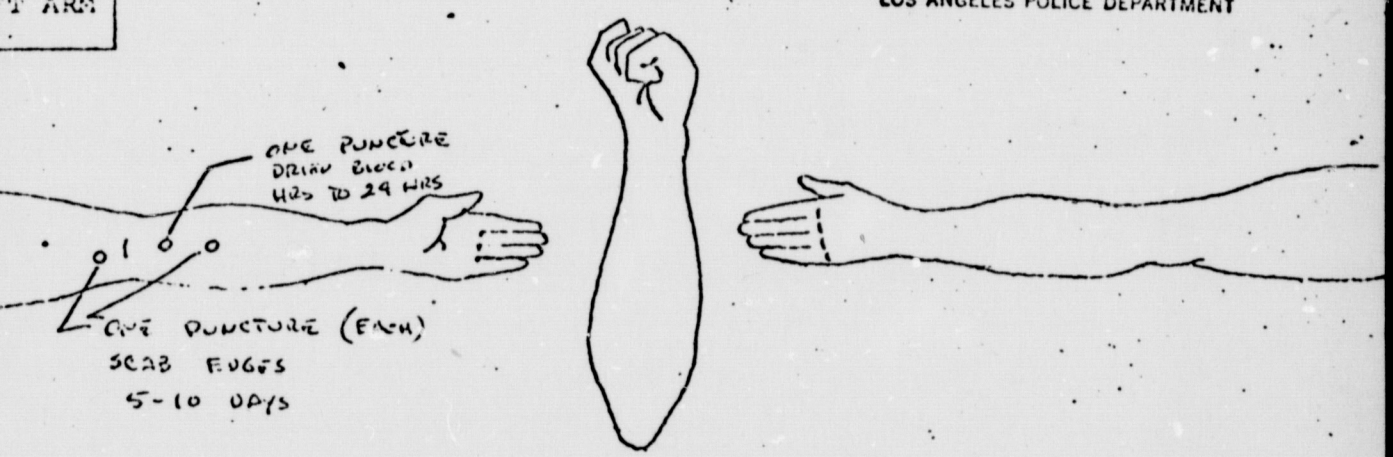
RIGHT ARM



THIS IS TO CERTIFY THAT I HAVE EXAMINED THE ORIGINAL OF THIS DOCUMENT AND FIND THIS REPRODUCTION TO BE A TRUE COPY OF SAME, MADE WITHOUT ALTERATIONS OR ERASURES.

By Sgt W J Sinclair
RECORDS & IDENTIFICATION DIVISION
LOS ANGELES POLICE DEPARTMENT

LEFT ARM



( ) WITHDRAWALS ( ) IS ADDICTED ( ) UNDER INFLUENCE: OF OPIATE | OCCASIONAL USER

PHYSICAL SYMPTOMS OF USE - EYES, NOSE, ETC.

EYES 2.0 MM — NO REACTION TO LIGHT - VERY SLOW SPEECH

INVESTIGATOR'S REMARKS: UNDER OFC'S OBSERVATION FOR APPROX 4-5 HRS.
EYE LIDS HEAVY - UNSTEADY ON HIS FEET,

1230 359 | JD | E A 30353 | Ca

Williams, Arto Ray

108 Vista Pl. Venice Ca.

Sex	Blk	Eyes	Height	Weight	Birthdate	Age
Neg	Blk	Brn	5-9	161	11-8-37	35

Police ID	State	I.D. #	AKA / Nickname
none		1289	none

Parole or Unit	Jail Retained At	Bail
Winston/Salem N.C.	AHD	

Scientific Rating	Date & Time Arrested	Time Rad.
77th Z	12-8-72 2130	0032

Location of Arrest: 2026 E. 103rd St.

Town, Twp. or P.A.: HOME

Warrant No.:

Charge (Section, Code, Description): F 11500 H&S Poss Heroin

Location Crime Committed: 2026 E. 103rd St.

Social Security No.	Observable Physical Oddities	Occupation / Grade
none	none visible	labor

Employer (Firm or Person's Name, City, & Phone) / School: not employed

Special Medical Problem: none

Clothing Worn: brn shs. brn pts. blk sht bge jkt none

Exact Location/Disposition Arrestee's Vehicle:

List Connecting Arrests by Type & Identifying Nos.: 2ND SAME ON.

Vehicle Used (Year, Make, Model, Type, Color, Lic. No., ID Marks): 70 DATSUN 4DR SDN YLW

Complainants/Vic of Illness(es) - By Whom Treated:

Driving Veh. (Direction & Name of Street) at Or Between Streets: PKD 7000 C. USE

CODE: V - Victim (Firm Name if Business) W - Witness ON JUVENILES ONLY: P - Both Natural Parents G - Guardian

Name	Address	City	Phone
	RES.		
	BUS.		
	RES.		
	BUS.		
	RES.		
	BUS.		
	RES.		
	BUS.		

ADMONITION of RIGHTS (when applicable) THE FOLLOWING STATEMENT WAS READ TO THE ARRESTEE: *"You have the right to remain silent. If you give up the right to remain silent, anything you say can and will be used against you in a court of law. You have the right to speak with an attorney and to have the attorney present during questioning. If you so desire and cannot afford one, an attorney will be appointed for you without charge before questioning."*

THIS ADMONITION WAS READ TO THE ARRESTEE BY (NAME & SERIAL NO.): NOT

Supervisor	Serial No.	Reporting Officers:	Serial No(s).	Division/Detail	Vacation Date
	39				
Date Time Reproduced	Div./Clerk				
8/9					

USE CONT. SHEET FOR NARRATIVE (AS PER INSTRUCTIONS ON BACK OF THIS PAGE) - - - - BELOW SECTION TO BE COMPLETED BY INVESTIGATOR

COMMENTS OF INVESTIGATOR - INCLUDE WHEN RELEASED, NAME OF AGENCY, AND PERSON ACCEPTING RELEASE.

THIS IS TO CERTIFY THAT I HAVE EXAMINED THE ORIGINAL OF THIS DOCUMENT AND FIND THIS REPRODUCTION TO BE A TRUE COPY OF SAME, MADE WITHOUT ALTERATIONS OR ERASURES.

By [signature]
RECORDS & IDENTIFICATION DIVISION
LOS ANGELES POLICE DEPARTMENT

C & H | Boys' Home | PEI | Other Law Enf. Agency | Address | Photo Returned

Other Surp. | Boys' Home Asst. | EYA | Juvenile Asst. (Probation) | Felony | Yes | No

Prison / Jail | Special Agency | Probation | Other

Where Disposition Can Be Obtained | Date Rel. Req. | Adult Present at Interview | Detention Interview | Date & Time of Interview | Juv. Division Approving | Date Rel.

Yes | No

ARREST REPORT Exhibit "E"

Los Angeles Police Department — CONTINUATION SHEET

DIV	AREA	PAGE	TYPE OF REPORT	DR NO.
		2/4	MASS ARREST MULTI-2	72-70[illegible]

DEFT 1 WILLIAMS, WALTER R. 2230359
DEFT 2 CAMPBELL CHARLES 2230377

SOURCE OF ACTIVITY

OFCRS. ASSGN TO A-CRIME TASK FORCE IN RESPONSE TO CITZNS COMPLAINTS OF JUV GANG ACTIVITY, NARCOTICS ACTIVITY + AN INCREASE IN MAJOR CRIMES. OFCRS E/B 2026 E 115ST.

OBSERVATION

OFCRS OBS A 1970 BLK/RED DATSUN LIC NO 40[illegible]EYH PKD ON THE N/SIDE OF 113 ST. DEFT-1 WILLIAMS WAS SITTING IN THE R/F SEAT OF VEH. DEFT WILLIAMS HEAD PERIODICALLY FELL FORWARD + HIS CHIN TOUCHED HIS CHEST IN A NODDING EFFECT. DEFT-2 CAMPBELL WAS SITTING IN DRIVER SEAT OF VEH. OFCRS EXITED VEH TO INVST. OFCR EDWARDS OBS A HYPODERMIC NEEDLE LAYING ON THE CONSOLE BETWEEN FRONT SEATS OF VEH. DEFT CAMPBELL EXITED DRIVER SEAT OF VEH AS OFCRS APPROACHED VEH. OFCR ANDREWS APPROACHED DEFT WILLIAMS. OFCR NOTED DEFTS EYELIDS TO BE DROOPY. DEFTS SPEACH WAS SLOW + DELIBERATE, DEFT WILLIAMS REPEATIDLY SCRATCHED HIS NOSE + CHIN. OFCR ANDREWS ATTEMPTED TO ILLUMINATE DEFTS FACE WITH HIS FLASHLIGHT + CK DEFTS PUPILARY REACTION. DEFT WILLIAMS JERKED HIS HEAD BACKWARDS + LOOKED STRAIGHT UP SO THAT OFCR ANDREWS COULD NOT SEE DEFTS EYES. OFCR ANDREWS TOLD DEFT TO LOOK FORWARD. DEFT WILLIAMS COMPLIED + OFCR ANDREWS NOTED HIS PUPILS TO BE CONSTRICTED TO 1.5 MM'S WITH NO REACTION TO LIGHT. OFCR ANDREWS FELT DEFTS HAND + NOTED IT TO BE COLD + HIS ARMS WARM. OFCR ANDREWS ASKED

If additional space is required, use reverse side. OVER *Continue on reverse side

CONTINUATION SHEET

	3/4	ARREST MULTI-2	BOOKING NO 2230 891 894	DATE 12-10-80	

DEFT WILLIAMS TO REMOVE HIS CONT, DEFT COMPLIED & OFCR ANDREWS OBS NUMEROUS PUNCTURE WOUNDS OVER THE VEIN OF DEFTS INNER R/ELBOW. ONE OF THESE PUNCTURE WOUNDS WAS IN THE MIDDLE OF A RAISED, RED, CIRCULAR AREA & HAD NOT FORMED A SCAB. OFCR ANDREWS ALSO OBS A TRAIL OF FRESH WET BLOOD RUNNING FROM THE WOUND APPROX 3" TOWARD DEFTS WRIST. OFCRS FORMED THE OPINION DEFT WILLIAMS WAS UNDER THE INFLUENCE OF AN ILLEGALLY INJECTED OPIATE.

AS OFCR EDWARDS APPROACHED VEH, HE ILLUMINATED REAR AREA OF VEH & OBS A HYPODERMIC SYRINGE LAYING ON THE R/R FLOOR BOARD OF VEH. AS OFCR EDWARDS RETRIEVED SYRINGE, HE OBS A SPOON LAYING UNDER THE R/F SEAT. THIS SPOON CONTAINED A CLEAR LIQUID RESEMBLING HEROIN & WATER. THE BOTTOM OF THE SPOON WAS COVERED WITH SOOT & THERE WAS A SMALL PIECE OF COTTON IN THE MIDDLE OF CLEAR LIQUID. OFCR EDWARDS SEARCHED VEH & RECOVERED MATCHES, (2) TIE RAGS & (1) PIECE COTTON FROM GLOVE COMPARTMENT OF VEH.

ARREST

BOTH DEFTS ARR 11500 H&S (POSS HEROIN)

BOOKING

BOTH DEFTS BKD 11500 H&S (POSS HEROIN) @ JAIL DIV. BKG ADVISED BY BRESSEM, 11360 77 NARCO

MT

DEFT CAMPBELL TRANS TO CENTRAL REC HOSP WHERE HE RECEIVED M.T. FOR OLD HEART SURGERY.

CONT

IF MORE SPACE IS REQUIRED, USE CONT. SHEET, 35.09 D

Official Capacity
Exemplified Copy

STATE OF CALIFORNIA

ITEM NO.	QUAN.	DESCRIPTION OF ARTICLES	DISPOSITION	DATE
		EVIDENCE		
		BELOW LISTED PROP RECOVERED FROM DEFT CAMPBELLS VEH. MKD "ME" FOR ID + BKD @ PROP DIV.		
1	1	HYPODERMIC SYRINGE		
2	1	SPOON, CONT CLEAR SUBS RESEMBLING HEROIN		
3	1	COTTON, SMALL PIECE		
4	1	BOOK MATCHES		
5	2	SOCKS, BLACK		
6	1	NEEDLE, HYPODERMIC		
		ADDITIONAL		
		SCHEMATIC COMPLETED ON DEFT WILLIAMS BY ANDREWS, 16397. PHOTOS TAKEN OF DEFTS R/ARM @ JAIL DIVISION		

If additional space is required, use reverse side

Continue on reverse side

CONTINUATION SHEET

05.09.01(10-70)

Los Angeles Police Department

ARREST DISPOSITION REPORT

BOOKING NO.	ARRESTEE'S NAME (Last, First, middle)		
2124 529	Williams, Arto		
BIRTHDATE	DATE & TIME ARRESTED	DIV. ARRESTING	DIV. BKG. (If different)
11-8-37	9-19-72 0215	Venice	Same

CHARGE (Section, Code, Definition) 11500 HS (Poss Heroin) ☐ Misd. ☒ Felony

IF NO COURT APPEARANCE— HOW RELEASED: 849B (1) PC. DETENTION ONLY..... 849B (2) PC. INTOXICATI
(If released under 849B (1) PC. also check reason below):
ASCERTAINABLE EVIDENCE INSUFFICIENT..... ADMISSIBLE EVIDENCE INSUFFICIENT..... ARRESTEE EXONERA
COMPLAINANT REFUSES TO PROSECUTE..... FURTHER INVESTIGATION..... OTHER.....
RELEASED TO ANOTHER AGENCY..... (SHOW NAME & LOCATION):
REMARKS:

DATE RELEASED	DATE THIS REPORT	OFFICER REPORTING (NAME & SERIAL NO.)

INFORMATION FROM COURT

IF DIFFERENT FROM ABOVE-TRUE NAME OF DEFT., AS ON COMPLAINT — DATE OF DISPOSITION: 10-11-72

IF MORE THAN ONE CHARGE ON COUNT INVOLVED, SHOW APPROPRIATE INFORMATION FOR EACH, INCLU

FINAL CHARGE(S)	DISCHARGED—SHOW ADD. REASONS, IF ANY	"J" HOW CONVICTED:	DISPOSITION OR SENTENCE
H+S 11721	DISMISSED ✓	PG	
	NOT GUILTY	PNC	
	BAIL FORF.	JURY	
	OTHER	COURT	
PC 647(f)	DISMISSED	PG X	155 / 1 yr. S.P.
	NOT GUILTY	PNC	
	BAIL FORF	JURY	
	OTHER	COURT	
	DISMISSED	PG	
	NOT GUILTY	PNC	
	BAIL FORF	JURY	
	OTHER	COURT	

951401-W

LA# 957400-W

CII# 3760376

FBI# 178522-C

ON.....

TED.....

.....

COUNT CASE NO.

791.388

DING ANY REDUCTIONS

	CONVICTED STATUS
	FELONY--------- MISD.---------- REDUCED -------- SEC. 17 PC.--------
	FELONY--------- MISD X REDUCED--------- SEC. 17 PC.----------
	FELONY--------- MISD ---------- REDUCED--------- SEC. 17 PC.--------

Exhibit "F"

2236 389

DATE OF ARREST	TIME OF ARREST	DEPT. ARRESTED	DISPOSITION
11-9-37	12-8-72 3130	77	JAIL

CHARGE (Section, Code, Description)

11500 H&S Poss Heroin ☐ Misd. ☒ Felony

IF NO COURT APPEARANCE — NOW RELEASED: 3498 (1) PC. DETENTION ONLY ..... 849 (2) PC. INTOXICAT
(If release under 849 (1) PC also check reason below):
ASCERTAINABLE EVIDENCE INSUFFICIENT ..... ADMISSIBLE EVIDENCE INSUFFICIENT ..... ARRESTEE EXONER
COMPLAINANT REFUSES TO PROSECUTE ..... FURTHER INVESTIGATION ..... OTHER .....
RELEASED TO ANOTHER AGENCY ..... (SHOW NAME & LOCATION):
REMARKS:

DATE RELEASED	DATE THIS REPORT	OFFICER REPORTING (NAME & SERIAL NO.)

INFORMATION FROM COURT

IF DIFFERENT FROM ABOVE-TRUE NAME OF DEFT., AS ON COMPLAINT	DATE OF DISPOSITION
	1-10-73

IF MORE THAN ONE CHARGE ON COUNT INVOLVED, SHOW APPROPRIATE INFORMATION FOR EACH, INCLUD

FINAL CHARGE(S)	DISCHARGED – SHOW ADD. REASONS, IF ANY:	"J" HOW CONVICTED:	DISPOSITION OR SENTENCE
11721 H&S.	DISMISSED ✓	PG	
	NOT GUILTY	PNC	
	BAIL FORF.	JURY	
	OTHER	COURT	
647f. P.C.	DISMISSED	PG ✓	Susp. if sent. su 24 hrs. Sher. Sum. P.C. ① 90 days. Conditions 1–5
	NOT GUILTY	PNC	
	BAIL FORF	JURY	
	OTHER	COURT	
	DISMISSED	PG	
	NOT GUILTY	PNC	
	BAIL FORF	JURY	
	OTHER	COURT	

LA [illegible] 65 170042

CII [illegible] 396 6376

FBI [illegible] 178 522 C

ION .....

ATED .....

COURT CASE NO.

3 | 3143150 4

ING ANY REDUCTIONS

	CONVICTED STATUS
	FELONY
	MISD
	REDUCED
	SEC 17 PC
	FELONY
	MISD ✓
	REDUCED
	SEC 17 PC
	FELONY
	MISD
	REDUCED
	SEC 17 PC

THIS IS TO CERTIFY THAT I HAVE EXAMINED THE ORIGINAL OF THIS DOCUMENT AND FIND THE REPRODUCTION TO BE A TRUE COPY OF SAME MADE WITHOUT ALTERATIONS OR OMISSIONS

BY [illegible]
RECORDS & IDENTIFICATION DIVISION
LOS ANGELES POLICE DEPARTMENT

Exhibit "G"

THE PEOPLE OF THE STATE OF CALIFORNIA VS.	DATE POSTED	APPEARANCE DATE	AMOUNT	RECEIPT OR BOND NO.	COURT
TO RAY WILLIAMS					

nt(s)

te
. 1972

Complaint filed declared to by K. BOULTER #7047 charging the Defendant with

having on 12-8-72 in the City of Los Angeles, County of Los Angeles, State of California,

committed a misdemeanor, to-wit: VIOLATION SECTION 11721 OF THE STATE HEALTH AND SAFETY CODE, A MISDEMEANOR

Declaration in support of arrest warrant made under section 840 C.C.P. filed.

Code cases drawn pursuant to section 1427 P.C. Warrant ordered issued.

Warrant issued. Bail set at $1000

LINDA J. HERBERIAN, M.P.

Motion to add Ct II 4143 B+P

CLARENCE A STAINWALL

Case called. Judge

Both parties ready. People represented by DAVID A. OGDEN

Defendant represented by Deputy Public Defender

Defendant in court, duly arraigned, informed of the charge/s

name as charged and enters his plea of not guilty of the charges charged

jury trial. Defendant instructed to appear personally for

trial set for 1/10/73 8 A.M. in Div. 40

Bail $ 500 incl. F.A. Bch. Committed. Bail to Stand.

Defendant duly [illegible] Complaint read and [illegible] to a public [illegible] court in presence of [illegible] of the court; not to be [illegible] represented by a lawyer [illegible] counsel provided for him if he is [illegible] charges and the consequences of the plea

320

DEFENDANT ARRAIGNED COMPLAINT FILED

R/T

Deft to appear.

Written MOTION FOR 1538.5 P.C. TO BE HEARD AT TIME OF TRIAL

Dr. Markman appt 730, 952 + 1017 Evidence Code. Exhibit #

IN THE MUNICIPAL COURT OF LOS ANGELES JUDICIAL DISTRICT
IN THE COUNTY OF LOS ANGELES, STATE OF CALIFORNIA

No. 21731

Page 2

...of the
...of
...nia,
...iff.

vs. Hate Ray Williams

...Defendant(s)

Date

In this case Thomas Thomas Reporter is ordered to take down proceedings as provided by law.

DIV. [illegible] convened at M., Cause called. Judge RONALD M. GEORGE presiding.

Both parties ready. People represented by RONALD S. WEISS (D.C.A.)

Defendant ✓ in court and represented by PUBLIC DEFENDER - Horowitz

...Deputy Clerk

ON MOTION OF THE PEOPLE (COURT), AND LEAVE OF COURT FIRST OBTAINED, AN AMENDED COMPLAINT IS DEEMED FILED, ALLEGING THE VIOLATION OF SECTION 647(f) of the Penal Code AS COUNT II

DEFENDANT ARRAIGNED / WAIVES READING OF COMPLAINT AND STATEMENT OF RIGHT AND ENTERS A PLEA OF ✓ GUILTY (NOLO CONTENDERE) TO COUNT II COUNT I DISMISSED ON MOTION OF THE DEPUTY CITY ATTORNEY AT THE TIME OF SENTENCE

DEFENDANT IN COURT, AND LEAVE OF COURT FIRST OBTAINED, WITHDRAWS PLEA OF NOT GUILTY HERETOFORE ENTERED AND NOW ENTERS PLEA OF GUILTY (NOLO CONTENDERE) OF THE OFFENSE CHARGED.

PEOPLE AND DEFENDANT AND HIS COUNSEL IN OPEN COURT EACH PERSONALLY WAIVE JURY TRIAL.

DEFENDANT (AND COUNSEL) KNOWINGLY, INTELLIGENTLY AND UNDERSTANDINGLY WAIVE FURTHER READING OF THE COMPLAINT AND STATEMENT OF RIGHTS. DEFENDANT (AND COUNSEL) WAIVE RIGHT TO CONFRONTATION, CROSS-EXAMINATION AND SELF INCRIMINATION.

THE COURT FINDS THAT THIS PLEA IS FREELY AND VOLUNTARILY ENTERED AND THAT THE DEFENDANT UNDERSTANDS THE NATURE OF THE CRIME AND THE CONSEQUENCES OF SUCH PLEA.

THE COURT FINDS THE PLEA TO BE THE RESULT OF A BARGAIN BETWEEN COUNSEL FOR THE PEOPLE AND THE DEFENDANT AND HIS/HER COUNSEL PURSUANT TO PEOPLE VS. WEST, AND THAT THERE IS A FACTUAL BASIS FOR THE PLEA. THE SENTENCE TO BE IMPOSED IS JOINTLY RECOMMENDED BY THE DEFENDANT, HIS/HER COUNSEL AND COUNSEL FOR THE PEOPLE.

TIME AND ARRAIGNMENT FOR SENTENCE IS WAIVED.

DEFENDANT IN COURT AND HAVING BEEN DULY ARRAIGNED FOR JUDGMENT, AND THERE BEING NO LEGAL CAUSE WHY JUDGMENT SHOULD NOT BE PRONOUNCED,

IMPOSITION OF SENTENCE SUSPENDED
SUMMARY PROBATION FOR 24 MONTHS ON CONDITION DEFENDANT
1. SERVE 90 DAYS IN COUNTY JAIL AND
2. THAT HE OBEY ALL LAWS AND NO FURTHER VIOLATIONS OF THE LAW.

CREDIT ALLOWED FOR 30 DAYS SERVED
LEAVING BALANCE OF 60 DAYS TO BE SERVED, which may be served in any County or State Penal Institution

Continued over →

No. [illegible]

Page

People of the State of California, *Plaintiff.*

vs. [illegible] Roy Williams

JAN 10 1973

(3) NOT USE OR POSSESS, WITHOUT VALID PRESCRIPTION, OR SOLICIT OTHERS TO USE OR POSSESS OR ASSOCIATE WITH ANYONE WHO USES OR POSSESSES (EXCEPT IN CONJUNCTION WITH AN AUTHORIZED PLAN OF REHABILITATION) ANY MARIJUANA, NARCOTICS, DANGEROUS DRUGS OR RELATED PARAPHERNALIA.

(4) CARRY AT ALL TIMES A VALID CALIFORNIA DRIVERS LICENSE OR DEPARTMENT OF MOTOR VEHICLES IDENTIFICATION CARD CONTAINING YOUR TRUE NAME, AGE, CURRENT ADDRESS AND SHALL DISPLAY SUCH IDENTIFICATION UPON REQUEST TO ANY PEACE OFFICER OR OFFICER OF THE COURT UPON REQUEST AND NOT USE ANY OTHER NAME.

(5) SUBMIT TO AND COOPERATE IN FIELD INTERROGATION BY ANY PEACE OFFICER AT ANY TIME OF THE DAY OR NIGHT.

(6) SUBMIT YOUR PERSON, VEHICLE ~~AT ANY TIME~~ TO SEARCH ~~AND SEIZURE AT ANY TIME OF THE DAY OR NIGHT, WITH OR WITHOUT~~ A SEARCH WARRANT, WHENEVER REQUESTED TO DO SO BY ANY PEACE OFFICER.

(7) REPORT TO THIS COURT, IN PERSON, WITHIN 5 DAYS OF ANY ARREST WHILE ON PROBATION; IF IN CUSTODY, REPORT BY REGISTERED MAIL.

THE DEFENDANT ACKNOWLEDGES RECEIPT OF A WRITTEN COPY OF THE FOREGOING CONDITIONS; HAS READ, UNDERSTANDS AND AGREES TO THEM.

DEFENDANT COMMITTED
COMMITMENT ISSUED

JUN 29 1973

I certify that this is a full, true and correct copy of the original court docket on file in this office.

ATTEST: A. [illegible], Clerk of the Municipal Court of Los Angeles Judicial District, County of Los Angeles, State of California.

By [illegible] Deputy

STATE OF NEW YORK
COUNTY COURT : COUNTY OF ERIE

****

THE PEOPLE OF THE STATE OF NEW YORK

-vs-

AFFIDAVIT

MARTIN SOSTRE,

Defendant.

****

County of Los Angeles)
State of California) ss

Arto Williams, being duly sworn, deposes and says:

I am presently a member of Tuum Est, a nonprofit organization for the rehabilitation of drug addicts, and I have resided there at 108 Vista Place, Venice, California, since October 22, 1970.

I make this affidavit in support of a motion for a new trial in the above case.

In or about the month of June, 1967, I was arrested for theft of an air conditioner, a felony, and was held in the Erie County Jail. After I was in jail for approximately two weeks I wrote a letter to Sgt. Alvin Gristmacher of the Buffalo Police Narcotics Squad requesting an interview. At the time prior to my arrest I was a drug user.

Sgt. Gristmacher visited me in the Erie County Jail and I explained to him what I had been arrested for. I told him that I was willing to assist him in any way that he saw fit

ONLY COPY AVAILABLE

 Exhibit "E"

if he was willing to help me with my case. He told me that he would speak to Michael Amico, Chief of the Narcotics Squad, who I now believe is Sheriff of Erie County.

About a week later, I was visited by Sgt. Gristmacher, Chief Amico, and another officer whose name I cannot remember. I was asked whether I was still willing to help them and I said yes. Chief Amico left the room to contact a judge but wasn't able to, but I was assured that I would be released the next day. On the next day, July 14, 1970, I was taken to court and released on my own recognizance in a judge's chambers.

I was then taken to police headquarters to the Narcotics Division where I was met by Sgt. Gristmacher. This was approximately 3:00 p.m. I was given some money and told to meet him at Winslow and Fillmore in Buffalo at 9:00 or 10:00 p.m. As soon as I left police headquarters I went directly to score (buy drugs) with part of the money Sgt. Gristmacher gave me, although I told him I would go to my mother's.

At about 9:00 or 10:00 p.m. that evening I met Sgt. Gristmacher at the corner of Winslow and Fillmore. I was taken to police headquarters and told to stay in the car. At this time I took the drugs I was carrying with me off my person and placed them in the car.

A Negro man in plain clothes was brought to the car and

introduced to me as an employee of the State Police, but I cannot remember his name.

I was searched, and no drugs were found, but the car wasn't searched, and that is where the drugs I had bought were.

We then proceeded to the Afro-Asian Bookstore at Jefferson and Woodlawn where I was given fifteen dollars ($15.00) in bills which appeared to me to be unmarked. The state trooper and I then walked a block to the bookstore.

When we went in I saw Martin Sostre and said "So what's happening?", which is one of the Black man's way of saying hello. He replied "Nothing to it." I was more or less a daily visitor to Martin's bookstore and we knew each other quite well, so he knew what I meant when I indicated to him that I didn't want the person with me there. Martin told me to ask my friend to wait outside and the trooper did then go out and stood in the doorway.

I gave Martin the $15.00 and asked him to hold on to it until morning for me. He had done this for me before and he agreed. I did not ask him for drugs and he did not give or sell me any drugs.

As I turned to walk out the door of the bookstore I put my hand into my pocket as though I was putting something in my pocket, but the drugs (in a glassine envelope) were already

there and had been before I went into the store.

I walked out and told my so-called friend to come on, and returned to the car where I took the drugs out of my pocket. I gave them to Sgt. Gristmacher who asked me to put my initials on the pack of drugs and I did.

I was then taken back to police headquarters by the state trooper. There the police gave me a statement about how I was supposed to have made the buy. I did not give the statement but I did read it before I signed it.

I believe that Sgt. Gristmacher and some other officers returned to the bookstore to arrest Martin Sostre.

At the time of Martin Sostre's trial I was given the statement I had previously signed and told to remember it and repeat it when I got on the witness stand. I did this to keep from going to jail as a second felon although it was not true. For my part in the trial I was granted probation.

At Tuum Est I have come to understand the importance of telling the truth and so, after discussions with Hollis Candy Latson, the co-ordinator of Tuum Est, on March 21st, 1971, I decided to make this statement. On March 26th, Mr. Latson wrote to Judge Constance Baker Motley telling her of my decision.

I have made this statement entirely from my memory of the events I have described and it is, to the best of my recollection,

a true account of those events.

Arto Williams

Arto Williams

Subscribed and sworn to before

me this 8th day of April, 1971,

at Los Angeles, California.

Gail L. Zook

Notary Public

OFFICIAL SEAL
GAIL L. ZOOK
NOTARY PUBLIC - CALIFORNIA
PRINCIPAL OFFICE IN
LOS ANGELES COUNTY
My Commission Expires Sept. 10, 1972

STATE OF CALIFORNIA
County of Los Angeles

(General)

I, WILLIAM G. SHARP, County Clerk and Clerk of the Superior Court of the State of California, for the County of Los Angeles, which Court is a Court of Record,

having by law a seal, do hereby certify that Gail L. Zook

whose name is subscribed to the attached acknowledgment, proof or affidavit, was at the time of taking said acknowledgment, proof or affidavit, a Notary Public IN AND FOR LOS ANGELES COUNTY, duly commissioned and sworn, with the principal place of business or employment in said County, and was, as such, an officer of said State, duly authorized by the laws thereof to take and certify the same, as well as to take and certify the proof and acknowledgment of deeds and other instruments of writing to be recorded in said State, to take depositions and/or affidavits, and to administer oaths or affirmations, in any County in this State, and that full faith and credit are and ought to be given to his official acts; that the certificate of such officer is required to be under seal; that the impression of his official seal is not required by law to be on file in the office of the County Clerk; I further certify that I am well acquainted with his handwriting and verily believe that the signature to the attached document is his genuine signature, and further that the annexed instrument is executed and/or acknowledged according to the laws of the State of California.

Executed and the seal of said Superior Court affixed at

Los Angeles, California April 8, 1971

WILLIAM G. SHARP
County Clerk and Clerk of the Superior Court of the
State of California, for the County of Los Angeles.

By D. Chapelle Deputy

Official Capacity
Exemplified Copy

STATE OF CALIFORNIA,
County of Los Angeles

I, Clarence E. Cabell, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California for the County of Los Angeles, do hereby certify and attest the foregoing to be a full, true and correct copy of the original

Probation Report, and letter of September 13, 1970, in the Superior Court Case Number A252231, in the case of the People of the State of California vs. ARTO WILLIAMS.

on file or of record in my office, and that I have carefully compared the same with the original.

Executed and Seal of Said Superior Court Affixed at
Los Angeles, California

June 27, 1973

Clarence E. Cabell
County Clerk of the County of Los Angeles, State of California, and
Clerk of the Superior Court of the State of California
County of Los Angeles

STATE OF CALIFORNIA,
County of Los Angeles

I, A.J. McCourtney, Presiding Judge of the Superior Court of the State of California for the County of Los Angeles, do hereby certify that CLARENCE E. CABELL is County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California for the County of Los Angeles (which Court is a court of record, having a seal); that the signature to the foregoing certificate and attestation is the genuine signature of the said CLARENCE E. CABELL as such officer; that the seal annexed thereto is the seal of said Superior Court; that said CLARENCE E. CABELL as such Clerk is the legal custodian of the original records or documents described and referred to in the foregoing certificate; is the proper officer to execute the said certificate and attestation, and such attestation is in due form according to the laws of the State of California.

Executed at Los Angeles, California

June 27, 1973

A.J. McCourtney
Presiding Judge of the Superior Court of the State of California
for the County of Los Angeles

STATE OF CALIFORNIA,
County of Los Angeles

I, CLARENCE E. CABELL, County Clerk of the County of Los Angeles, State of California, and Clerk of the Superior Court of the State of California for the County of Los Angeles (which Court, is a court of record, having a seal which is annexed hereto), do hereby certify that A.J. McCourtney whose name is subscribed to the foregoing certificate of due attestation was, at the time of signing the same, Presiding Judge of the Superior Court aforesaid and was duly commissioned, qualified and authorized by law to execute said certificate. And I do further certify that the signature of the Judge above named to said certificate of due attestation is genuine.

Executed and Seal of Said Superior Court Affixed at
Los Angeles, California.

June 27, 1973

Clarence E. Cabell
County Clerk of the County of Los Angeles, State of California, and
Clerk of the Superior Court of the State of California
County of Los Angeles

(U.S. Code (1958) Title 28; Section 1738-State and Territorial Statistics and Judicial proceedings, full faith and credit.)

76E621-CDB 12/70

CERTIFICATION OF EXHIBIT "J"

(1)

September 13/70

Dear Mr. Barron:

I have always had trouble expressing myself as far as my feelings or emotional problems are concern. So I will try here to state the facts and let your years of experience be the judge.

In 1967 I decided that I had been using drugs 'Heroin) long enough, I was tired of the life and I felt that I wanted to contribut some of the knowledge I had gain from my experience as a user. So I explain this to a Sargent Grist Markee of the Buffalo Police "Narcotic Unit. I explain to him I was not interested in the pushers but the young kids on the grammer school leavel who's chanceis of ever finding happiness in life and living a productive life were beinging destroyed because of use of drugs (Heroin). So I work for them giving lectures and answering question concerning my experience as an addict.

In July of 1967 there was a riot in the black naborhood of Buffalo, N.Y. What they say that started it isn't important here. But I became deeply involved in it when the narcotics unit learned that Martin Sotress ? a known dealer and member of the Black Panthers and a owner of a Afro Book store that sold Communist leiture and convicted murder, was responsible for all Molotov Cocktails that were being used.

Im not aware of all of the details of there investigation. But I was used to set up a buy which came off as planed.

After Mr Sotress was arrested and charged with sales of narcotics and starting a riot and assult on two police officers. It came to light just how much backing Mr. Sotress had. The is some type of unit at the University of Buffalo name after him. By the way he was convicted or should I say there wouldn't have been any conviction if I had of taken the witness stand against him. He was sentenced to 39 years to 41 years in prison. His conviction is over two yrs old. I have a brother who was kill a month after he was convicted. He was stab 20 ? times the person who was arrested and convicted of it was the same race as Mr. Sotress Porta Recan Negro plus an addict my own brother wouldn't ever associate with me because I was an addict .....?

The whole time Mr. Sotress was awaiting trial I was kept in jail, which was nine months for my protection. Or used?

I guess you understand my reason for being in California. But there is nothing good about; for it was brought out in 1969 when I returned to Buffalo N.Y. to take the witness stand again in the same matter of Gerdine Robinson. Separate trials.

I guess by now you know my life is in danger.

As I stated before the organization that is supporting Mr. Sotress offers to regain his freedom are aware that I am in Los Angeles California and that they know that I was an addict. And as people seem to live by the fact of 1 out of 100 will only be natural for them to assume that I am still using drugs and it will be a simple matter of just knowning where all that addict congugate. Simple deduction. He'll be there. And I'm here; waiting? By your program that exactly what I'm doing.

I talk to my sister who trys to keep me inform as to what is going on there and the last report she gave by phone 8-25-70 was there have been people (strangers) ask her about me latly! I have been instructed that if I write, do so without a return address. So don't be surprise if you received my mail thats the address I gave her.

El Rey "Hotel

Yes, I'm setting right on tope of the world any one case see me. If I came out in the day time. I wouldn't sware on anyone bible. But someone is here. If there are not I know one thing for sure, there are two'2 addicts here from Buffalo, New York they were in the pool hall section of the Greyhould Bus station, I haven't seen them on this end yet. But I had the feeling long ago that someone was here that way I stayed with that girl. I told you about Friday and Saturday nights but I had to give her up because she is turning tricks and putting every penny in her arm and mines while I was there. That would be the most easy to get me through her.

If I had panic Saturday I would have handle the situation much better but that's water under the falls. Now I have a fellow who is down on his luck and has no place to stay so I let him stay with me at night. It's the only way I've been able to get any sleep and when brings a bottle with him.

Now you see why I wanted out from down here so badly. At first I told my self it is my own fault. But then all of a sudden it dond on my you knew all along and was tring to brake me. Mr. Collins let it out Friday when he ask me was I in trouble? was I being treaten? There one thing I dont believe in Mr. Barron, and that's playing with some one emotions, a man of your height of knowledge in your field so no better.

I sat down Fraiday and wrote to her tellingher just what took place at your office. I had to tell someone, and when I can't talk to them I write to you, I cant tell for ever out this world fool here what on my mind. I thought she was interested in me but all she want from me is sex. She thinks I'm younger than she. But I cant respond that has never happen before. By the way I've only taken off twice, it dosn't do anything for (back office page) me. Fear is a great stopper. But I dont feel afraid. I know what I must do and if it fails, then it has to be accepted as part of life and death. May if I had explain this to you Friday maybe you would have given me a night number to call in case.

I'll be waiting

This is my sister phone number in Buffalo, NY

Mrs. Dorothy L Perkings
area code
76 ricker St 716 895-3271

This is my mother's phone number in Cleveland Ohio
Area code
216 RA1-1743

Mrs. Estelle Conway RA-one
8116 Danbury St

I'm in room 468

TRUE COPY:
erm/6/28/73

RE: ARTO
A 252

Dear Mr

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WILLIAMS : September 13, / 70
231--)

Barron:

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ain to him I was not interested
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Exhibit 7

2

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[illegible]uction concerning my
[illegible]s an adult.

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2-25-70
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Ex H

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Mrs. Dor
76 Richard St.

This is my
Veterans

Miss Estelle Evans
2116 Lamburg St

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...n Christ.
... waiting

... sister Grace
... sister number in Buffalo N.Y.

...dy L. Robins
... Avenue
... 716 / 834-2271

...telephone number is
...nco
...ue
... 716 / 821-1743
...y 12 on

ONLY COPY AVAILABLE

WALSH & SCHNORR
ATTORNEYS AND COUNSELLORS AT LAW
1086 ELLICOTT SQUARE BLDG
BUFFALO, NEW YORK 14203

JOHN B. WALSH
MARTIN A. SCHNORR

TELEPHONE: 852-6222

October 9, 1970

Hon. Richard F.C. Hayden,
Dept. 103
Hall of Justice
306 North Broadway
Los Angeles, California

Dear Judge Hayden:

Arto Williams who was a former client of mine has asked me to write you to tell you why I think Arto is in California. The reason that Arto is in California in my opinion is because he wishes to save his life both in the physical and metaphorical sense. I was assigned to defend Arto on a larceny charge and also wound up defending him on several petty larceny charges in one of the towns that adjoin Buffalo.

Arto has been a narcotics addict for some time (long before it was even fashionable), has been in some of the best treatment centers in the U.S. and has been "cured" from time to time. Having been one of the original members of the American Bar Association's seven man committee on Crime Prevention and Control, it was my opinion that Arto's inability to continue being cured stems from the lack of after-care for these narcotic addicts. As Arto states, after he came back from being cured there was nothing to do but hang around the corner and meet the same old friends and eventually get into the same old difficulties and of course the larceny and boosting charges were done to help satisfy the habit.

At the time that I represented Arto he had already been sitting in jail for quite a number of months, quite unfairly I think, while his case was getting ready for trial. During that period of time he had done a considerable amount of reading and convinced me at least, that he was interested in attempting to do something to enforce the law and change conditions in the narcotics

Exhibit "K"

nd work with people in the black community and to tell it
t was.

I was also close to the beginning of the War on
y programs and was instrumental in developing our own
orhood law offices here in Buffalo which were the first
State of New York and I felt it was important to get
who have had street and personal experience who might
to the community and work with the community with a
g of trust from the community if we could ever alleviate
drug problems.

I felt it was important that Arto get out of this
or two reasons, one of which I will get to later, the other
st to get a new climate and environment and try to start a
fe and possibly work as he expressed to me with law enforce-
n trying to help solve this drug problem. To this end, I
ted Stanley Johnson who is, as you know, the Executive
or of the Los Angeles County Bar Association and Legal
its there to see if they might need an investigator or
e who is street-wise who could help in some of these
ms (not so much the Los Angeles County Bar Association but
rious legal defender units at that time springing up as
lt of O.E.O.) Although there was some interest expressed,
there was a lack of funds they decided not to hire Arto.
I obtained Arto's release, I had him work for a Foundation
ch I was the president and founder on the visual and performing
One of the purposes of this Foundation was to found a
ure park and art center and another purpose of which was to
deprived persons useful skills in such a cultural back-
. Arto did volunteer and did some work for us out on our
ure park.

The second reason that I felt that Arto should get
s the reason why Arto eventually did leave Buffalo and at
ne did so in violation of his probation and that was
e his life was, or at least he felt it was, in jeopardy.
his fears were probably well founded, the court discontinued
obation and Arto was freed of any responsibility with re-
e to the probation even though he did leave precipitously
thout the court's consent but the facts I think will
te to you as they indicated to our court that his leaving
ll justified.

In the City of Buffalo for some time we had a very notorious man by the name of Sostre. Mr. Sostre had been charged and convicted of many, many crimes including pandering and selling narcotics and just about every kind of a social ill that could be imagined. He was a black man who lived in the black community and totally defied the law. He was a thoroughly evil person with a record a mile long. Sostre, however, developed a kind of clique around him and he was eventually arrested for peddling narcotics and refused legal counsel but sought to defend himself and so disrupted the trial that he had to be bound and I think gagged. But his clique felt he had been martyred by the establishment and to this day we have fanatics from various universities and the Black Community marching around with signs seeking the freedom of Mr. Sostre who incidentally spent a considerable amount of time in solitary confinement since his conviction because of his conduct in prison.

At any rate the principal government witness against Sostre was Arto Williams who cooperated with police in an undercover capacity and probably because of his testimony Mr. Sostre, a most disreputable, vile and vicious person, was convicted and sentenced to a very long term in prison and removed from our community.

After Sostre's conviction while Arto was still in jail he received a considerable number of threats to his person. After he was released, these threats continued and Arto's brother was stabbed to death in Boston. Whether or not this stabbing was related to the Sostre situation is as yet unclear but Arto's family was convinced that it was related and their fears increased. Then one day Arto was set upon by three black men in the community who said they were going to get him and took a knife to him. He was fortunate to escape with only some stitches but his family who were quite frightened put him on a bus for California both for his own safety and so that Arto could have a new life. Arto insisted that they call me and tell me about this so that I could tell his probation officer and the court and take such steps as were necessary to have his probation lifted.

One other problem was that Arto was the principal witness in the case then pending against Sostre's accomplice, who

was Sostre's girl friend. When the case came up and I was contacted by the District Attorney's office I then contacted Arto's family who in turn got ahold of Arto and he, on his own, flew back to be the principal witness in that case. This case lasted a couple of weeks and Arto was put back on the plane with about ten dollars in his pocket. (We have strict rules with reference to what witnesses can be furnished in the way of food and lodging and nothing else). Because of Arto's testimony, Sostre's girlfriend also was convicted.

Arto then landed in Los Angeles with $10 in his pocket, out of work because he had missed two weeks of work in order to participate in the trial and apparently out of a place to stay because of some quarrel that arose at the place that he was rooming. Faced with those problems Arto took to apparently attempting to do some more boosting (a crime at which he was not very skillfull apparently) and he was arrested and called me collect from Los Angeles to see if I could help him. I called our District Attorney here, Michael F. Dillon, who called the District Attorney there and we got Arto freed and I managed to get $100 or so to Arto so that he could start his life over again.

Of course, Arto could have me conned, but in talking to him it seemed to me that he was genuinely serious about his desire to help law enforcement, that he was genuinely concerned about the narcotic problem. He mentioned that when he first got hooked there were relatively few people who were on the habit but he was really alarmed and concerned over the great increase in drug use since he first got acquainted with narcotics. He has now grown older and if given half a chance I believe he could prove to be a valuable asset in waging the war against narcotics. He did prove very reliable as the police undercover man and while I admit that it may sound rather unconventional to suggest that a former junkie be utilized to go out into the street and try to help fight this war against narcotics, I think we are going to have to engage in some very unconventional warfare to defeat this very insidious cancer in our society. If no one trusts Arto and he is not given anything constructive to do I suppose that he will fall back into his old ways. If he is given some responsibility, some activity, some purpose I think that he could do very well for society. I admit it is a gamble but with the

proper safeguards it might not be too great a gamble and in the long run it could prove to be very helpful to society.

Arto has become less of an assigned case and more of a career for me but if I could be successful in helping to rehabilitate this man and if he in turn could help to rehabilitate society, I would feel that the time and effort that I have donated to this cause would be well worth it and if he is given the chance and fails, I would be disappointed but if another Arto Williams came along I would probably do the same thing because I would rather hope that somewhere along the line there is an Arto Williams who can be rehabilitated and can serve society so that society can cure itself than to despair that all is lost.

I don't know why Arto is appearing before you or why he asked me to write this letter but if it will assist you in discharging your responsibility to the cause of justice and to justice as a whole and to that part of it which relates to Arto Williams, I am happy to comply.

Very truly yours,

John B. Walsh

JBW:mw

County of Erie)
City of Buffalo) ss:

..... being *duly sworn, says I am* .....

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

----------x

UNITED STATES OF AMERICA
ex rel. MARTIN SOSTRE,

Petitioner,

-v-

ANSWERING AFFIDAVIT

FRANK M. FESTA, Superintendent of the Erie County Jail, and ROBERT J. HENDERSON, Superintendent of the Auburn Correctional Facility

Respondents.

----------x

Paul G. Chevigny, being duly sworn, deposes and says:

1. I am an attorney admitted to the bar of the Southern District of New York, the Second Circuit, and in this court pro hac vice. I make this affidavit in answer to the affidavit of Douglas Cream sworn to July 18, 1973.

2. Counsel for petitioner do not oppose the admission of any relevant evidence in this proceeding, or its re-opening for any substantial reason, prior to the court's decision. If the Court wishes to consider them*, we will not object upon technical grounds to the documents attached to Mr. Cream's affidavit. We question the wisdom, however, of admitting the materials attached

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*We do object strongly to the admission of Exhibit K, the letter of John Walsh. As will appear below, there there is no way it could be rendered admissible in this proceeding, even if authenticated.

ATE OF NEW YORK
UNTY OF ERIE
ITY OF BUFFALO

to Mr. Cream's affidavit for several reasons:

(a) The opportunity to cross-examine and rehabilitate the witness Arto Williams is now gone. The materials now offered should have been produced at the time of the hearing, and it is no excuse that the papers were in California. The respondents have known for years that the witness Williams was in California, and at least since 1971 that he had recanted. In preparing for the hearing, it would have been logical to obtain in advance from California as well as from the City of Buffalo all documents concerning this witness. As will appear more fully below, the bearing of the documents offered upon the witness' testimony is quite ambiguous and to attempt to make use of them without his presence is of little value.

(b) The record in this proceeding is already large. It does not seem useful to further burden it with evidence which is of little value.

(c) There are some gaps in the facts allegedly demonstrated by the documents, and without some California witnesses to authenticate and explain them they are not helpful in deciding this case.

3. Counsel for the petitioner disagree radically with Mr. Cream concerning the conclusions to be drawn from the documents. Your affiants' conclusions

Sostre
Holas

are set forth in paragraphs 4 through 8 of this affidavit.

4. In paragraphs Fourth through Sixth, Mr. Cream recounts the testimony of the witness Williams that he sold "baby aspirin," and was convicted for it; Mr. Cream then attaches Exhibits A through C, representing to this Court that they charge and convict Williams of selling L.S.D. It is clear on the face of those documents that Williams was charged with "offering" to sell L.S.D., but that he furnished "a substance in lieu thereof." It is submitted that those exhibits are entirely consistent with Williams' testimony on the point, and in fact strengthen his credibility.

5. Paragraph Seventh of Mr. Cream's affidavit recounts Williams' testimony that he is in jail for failure to report on his probation. Succeeding paragraphs set forth alleged arrests and convictions, apparently intended in part to imply that the statement is false. Significantly, there is not a syllable in the affidavit derived from any report or conviction for violating probation. It is perfectly possible that Mr. Williams' statement is true, or that he believes it to be true, and in any case the exhibits do not impeach it. On information and belief, it is not unusual for a probation officer to revoke probation for a technical violation, after a subject is arrested, in lieu of or in addition to the arrest as a ground for revoking proba-

tion.

6. Paragraphs Eighth through Eleventh of Mr. Cream's affidavit detail felony arrests and a misdemeanor conviction. Mr. Cream claims in paragraph Twelfth that all this proves that Arto Williams lied on page 86 of the transcript but it utterly fails to do so. In the first place, Mr. Williams was convicted of a misdemeanor, and could easily have thought that Mr. Cream was not referring to arrests resulting in a misdemeanor conviction. This view is strengthened by a reading of the record beginning at page 83. Mr. Cream first questionsabout Mr. Williams' underlying conviction in California which apparently did occur before his recantation. Then on page 85, Mr. Cream asks:

> Mr. Williams, as a matter of fact weren't you convicted of the crime for which you were returned to prison as a violation of probation subsequent to your decision to recant your testimony.

It was reasonable to assume that this question referred to that underlying conviction as well (as the witness' answer indicates) and it was reasonable to assume that the question and answer of Williams on page 86 on which Mr. Cream relies also referred to that underlying conviction. In fact, the witness admits on the same page that

he was arrested in December of 1972, presumably on some other charge. It is submitted that the attempt of Mr. Cream to impeach the witness in his absence, based upon answers to his own rather imprecise questions, and without producing all the relevant documents, illustrates graphically all the problems of evidence produced by this attempt to re-open the proceedings.

7. In paragraphs Fourteenth through Seventeenth, Mr. Cream refers to Exhibits J and K, claiming that they prove that Williams was lying when he said, at page 80, that his life was not threatened. On page 79, however, Williams specifically states that he feared for his life and on page 80 that his parents "worried", although he says he received no direct threats. These statements are consistent in all respects with Exhibit J. It does not contain a single instance of a threat to Arto Williams, although it does contain the fears of his family, and the sad but obscure death of his brother. (The attorney's letter, Exhibit K, does purport to detail an attack by someone on Williams, but it is utterly worthless as evidence, being third-hand hearsay at the very best. Petitioner objects to its admission under any conditions, since it could not be admitted even if properly authenticated in court.) Exhibit J is an interesting document, apart from the fact that it is totally

consistent with Williams' testimony in this case. It is evidence of Williams' sense of growing guilt about his testimony against petitioner; Williams seems to see people everywhere who may report him to the supposedly omniscient friends of Mr. Sostre. He is frightened when he sees two addicts from Buffalo, and even abandons a girl because he fears that people will "get him through her." He feels himself exposed, ever though he is more than three thousand miles from Sostre. One does not have to be a psychologist to detect here the prickings of conscience, for it is clear that if Williams had merely kept silent in California, the chances of finding him were small. Further, internal evidence in the letter tends to support testimony given in this proceeding. Arto Williams knew that the police wanted Martin Sostre for political reasons, as detailed in the letter (paragraph 3). The next paragraph reads:

> I'm not aware of all the details of these investigations. But I was used to set up a buy which came off as planned.

This odd phraseology is consistent with an admission that his "plan" was for a frame-up. The fourth sentence of the next paragraph may be similarly construed:

> By the way he was convicted or should I say there wouldn't have been any con-

viction if I had of (sic) taken the witness stand against him.

Finally, the prose in the letter deteriorates as it goes along, becoming more incoherent (possibly because of intoxication) as the expressions of guilt and unfounded apprehensions increase. It is submitted that the "threats" Mr. Williams experienced were those of his conscience.

8. Paragraph Twenty-fourth represents that the exhibits "show said Williams to have testified falsely before this Court in many instances." It is submitted that statement is grossly inaccurate, based on those very exhibits.

9. Counsel for petitioner wish to point out to the Court that this motion is most significant for what it does not contain. Here the respondents have moved to re-open the proceedings to put in these few exhibits which have little or no effect other than to corroborate Mr. Williams' testimony. They have had more than a month to search for evidence; they have scoured the files of California and Buffalo. Yet they have found nothing which would impeach the main outlines of Mr. Williams' testimony. A few examples follow:

(a) Mr. Williams testified (Transcript pp. 27-30) that officers Gristmacher and Amico told him

they wanted evidence against Sostre, and believed him to be a cause of the riots in Buffalo. The respondents do not attempt to introduce a syllable from any official to contest that statement. Instead, they produce their Exhibit J, which tends to suuport it.

(b) Mr. Williams testified (Transcript p. 30, 37) that he received probation on two criminal cases in or near Buffalo and was released from jail on July 14, 1967. If those statements were false, nothing would be easier than for the respondents to refute them. The failure of the respondents to include any mention of them in their extraordinary motion to re-open must strengthen the presumption that the statements are true. I attach a copy of the indictment in one case, the one arising on June 20 [1967, PEC] (Erie County Indictment #33781) which does show probation granted for Mr. Williams after Mr. Sostre's trial. On information and belief, records available at the Erie County Jail and in the courts of the town of Hamburg also tend to corroborate Mr. Williams' testimony. Counsel for petitioner submit that it is extraordinary for respondents to make their motion to re-open, and to present no more than they have. Their showing implies that they have no adequate answer to the testimony of Mr. Williams.

10. With the exception of proposed Exhibit K, as to which we vigorously object to its admission, counsel leave it to the court's discretion to admit or

refuse the exhibits attached to Mr. Cream's affidavit.

Paul G. Chevigny

PAUL G. CHEVIGNY

Sworn to before me

this 23 day of July, 1973.

NOTARY PUBLIC

ALAN H. LEVINE, Esq.
NOTARY PUBLIC, State of New York
No. 31-2327215
Qualified in New York County
Commission Expires March 30, 1974

County Court, Erie County.

THE PEOPLE OF THE STATE OF NEW YORK
AGAINST
ARTO WILLIAMS
EUGENE MORROW
STANLEY WILLIAMS

Indictment No. 33,781

The Grand Jury of the County of Erie, by this indictment, accuse ARTO WILLIAMS, EUGENE MORROW and STANLEY WILLIAMS, and each of them,

of the following crime: Grand Larceny in the Second Degree,

contrary to the Penal Law, Sections 1290, 1296,

in that they, the said ARTO WILLIAMS, EUGENE MORROW and STANLEY WILLIAMS, and each of them,

on or about the 20th day of June 1967, ~~xxtinx~~ ~~Chautauqua~~ in this County, with intent to defraud and deprive the true owners of their property and of the use and benefit thereof and to appropriate the same to their own use, feloniously stole a certain air conditioning unit of the value of more than $100.00, but less than $500.00, from Vincent Supples and Leroy Wilson, a co-partnership, doing business under the assumed name and style of Warehouse Furniture and Appliances.

District Attorney of the County of Erie.

No. 33,781

County Court
Erie County
January Term, 1968

THE PEOPLE OF THE STATE OF NEW YORK
AGAINST
ARTO WILLIAMS
EUGENE MORROW
STANLEY WILLIAMS

INDICTMENT

Grand Larceny in the Second Degree

A TRUE BILL

FILED IN THE COUNTY COURT
APR 19 1968

MICHAEL F. DILLON
District Attorney

ARRAIGNED BY COURT OF ERIE
TO COUNSEL Bayliss, J.

ONLY COPY AVAILABLE

Let to bail by .....

on the ..... day of

..... 19 ..... in the sum

of .....

SURETIES

Ready for trial and
Def. Arlo Williams. Defendant, ar-
raigned in person on the 2 day of
1968. Advised of right
to counsel by the Court. Defendant
Counsel retained Reads Not
Guilty. Counsel retained
Robert Pinkus (Court)
Ordered Colucci, J.

Sentenced to be imprisoned in the

State Prison at hard labor for the term of ..... years

..... month maximum

and ..... years ..... months, minimum.

FEB 29 1968 Counsel for Deft
Arlo Williams moves for inspection
of Grand Jury Minutes. Order
Denied. Colucci, J

MAR 27 1968 Motion for Inspection
of Grand Jury Minutes now denied.
Colucci, J

APR 1 1968 Robert Pinkus
Defendant ar-
raigned in person on the 1st day of
April, 1968. Advised of right
to counsel by the Court. Defendant
Reads Not
Guilty. Counsel retained
Robert Pinkus (Court)
Ordered Colucci, J

MAY 29 1968

Defendant appears
in person, advised of his rights to
counsel by the Court. Plea ordered
entered by the Court. Plea of not guilty
and new plea of guilty to petit larceny
Defendant sworn and record
sentenced to jail or continued
on bail.
Sentence July 3. 1968

7/6/68
Deft. Arlo Williams
appears in person with
counsel. Deft sentenced to
Erie County Pen for
one(1) year; sentence
suspended and placed
on probation for three(3)
years.
Hoffman J.

9/24/68 Order releasing
Deft. Arlo Williams from
probation.
Hoffman J

SEP 13 1968
Defendant appears in
person, advised of his rights to
counsel by the Court.
Withdrawn plea of not guilty
Plea of guilty
Attorney R. Eugene Hurley
present Defendant sworn and record
plea entered. Sentence continued
on bail
Sentence Sept 13. 1968
Mattina J.
Deft. Eugene Marriott pre-
Petit Larceny - Sentenced
Sept 10 1969
Mattina J.

IN 10 [illegible] Eugene Warren, Def. [illegible] with Counsel-Felt [illegible] [illegible] Plead Guilty to [illegible] Counsel [illegible] [illegible] [illegible] Def. advised by Court [illegible] Def. advised of right to Trial by Jury [illegible] Def. sworn and examined [illegible] Def. waives Jury Trial [illegible] Court. Pending [illegible] Def. [illegible] [illegible] [illegible] [illegible]

The Court imposes Sentence of Probation for a period of [illegible] years.

OCT 2 1969 Probation Officer [illegible]

[illegible] of Stanley Williams.

[illegible] Warrant [illegible]

ERNEST L. COLUCCI, [illegible]

IN 26 [illegible]

[illegible] Defendant [illegible] in person, advised of his right [illegible] counsel by the Court [illegible] [illegible] Withdraws former plea of not guilty and now pleads guilty to [illegible] Attorney [illegible] present. Defendant sworn and examined [illegible] taken. Remanded to jail [illegible] [illegible] Sentence [illegible] January 6, 1970 [illegible]

IN 20 [illegible]

[illegible]

U.S. Penit[illegible]

STATE OF NEW YORK

COUNTY COURT — COUNTY OF ERIE

PEOPLE OF THE STATE OF NEW YORK,

Plaintiffs, ORDER

vs. Indictment No. 33781

ARIO WILLIAMS, EUGENE MORROW
STANLEY WILLIAMS,

Defendants.

Upon reading and filing the notice of motion dated the 20 day of September, 1968 and the affidavit of John B. Walsh sworn to on the day of September, 1968 for an Order discharging the above named defendant from probation in the above captioned matter and after hearing John B. Walsh, attorney for the defendant in support of said motion and Michael F. Dillon, District Attorney of Erie County by Joseph P Sedita, assistant District Attorney consenting thereto and due deliberation having been had thereon,

Now on motion of John B. Walsh, attorney for the defendant and Michael F. Dillon, District Attorney of Erie County by , Assistant District Attorney consenting thereto, it is hereby,

ORDERED, that the motion be and it hereby is granted and the said ARIO WILLIAMS be and he hereby is discharged and released from probation.

Enter.

Dated: September 23, 1968

William K. Hotchkiss

Granted

September 27, 1968

Margaret Lovett Fisk

Special Deputy Clerk

County of Erie) ss:
City of Buffalo)

.....being duly sworn, says I am .....

in the office of the Attorney General of the State of New York, the Attorney for .....

..... herein. On the ..... day of 19

I served upon the following named persons:

Attorney in the within entitled action, a copy of the annexed .....

by depositing the same, properly enclosed in a post-paid wrapper, in the post office at Buffalo, N. Y., the post office of the Attorney General of the State of New York, directed to said Attorney , at the address within the State designated by .....for that purpose upon the preceding papers in the action.

Sworn and subscribed before me this
..... day of 19

.....

INDEX NO. 1972-237

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

U.S. ex rel. MARTIN SOSTRE,
Petitioner,

- v -

FRANK M. FISCH, Supt. of the Erie County Jail, et al.,
Respondents.

NOTICE OF MOTION AND STATEMENT IN SUPPORT OF MOTION

LOUIS J. LEFKOWITZ,
Attorney General

Attorney for Respondent Henderson

OFFICE AND POST OFFICE ADDRESS
STATE BUILDING
65 COURT ST., BUFFALO, N. Y. 14202

Personal service of a copy of

within .....

is admitted this ..... day of

.....19

Sir:

Take notice that the within is a copy of

.....

..... duly filed

and entered in the office of the Clerk of

..... County, on

the ..... day of

.....19

Yours, etc.,

LOUIS J. LEFKOWITZ,
Attorney General,

ATTORNEY FOR Respondent Henderson

OFFICE AND POST OFFICE ADDRESS
STATE BUILDING
65 COURT ST., BUFFALO, N. Y. 14202

To

Attorney for Petitioner
Herman Schwartz, Esq.
832 Prudential Bldg.
Buffalo, NY 14202

UNTY OF ERIE
ITY OF BUFFALO

I LEWIS STEVERSON BEING DULY SWORN DEPOSES AND SAYS THAT I AM EMPLOYED AS A TROOPER WITH THE NEW YORK STATE POLICE ATTACHED TO TROOP A AT BATAVIA NEW YORK. FURTHER THAT ON JULY 14,1967 I WAS ASSIGNED TO ACT IN A UNDERCOVER ASSIGNEMENT AND TOLD TO REPORT TO THE NARCOTICS SQUAD OF THE BUFFALO POLICE DEPT. AT 9:30PM ON JULY 14,1967.

Shortly after 9:30PM on July 14,1967 I met with Det.Sgt. Alvin R. Gristmacher of the Buffalo Police Department Narcotic Squad at his office. Both of us then went downstairs and met with an Informant of Det.Sgt. Gristmachers. I then observed Det.Sgt. Gristmacher search the informant and take from him his personal property . Det.Sgt. Gristmacher then gave the informat $15.00 in cash. The informant advised Det. Sgt. Gristmacher that he knew a "Brother Martin" , and had known him for approximately a year and a half during which time he had purchased heroin from "Brother Martin " about 15 times.

At this time along with the informant and Det.Sgt.Cristmacher we travelled from Police Headquarters in Det.Sgt.Cristmacher personal car to the corner of Woodlawn and Dupont in the City of Buffalo. The informant and I then left the car and walked to the Afro Asian Bookstore at 1412 Jefferson Avenue, Buffalo N.Y. and entered the store.

Upon entering the store I saw the informant walk up to Brother Martin, who has know been identified to me as Martin Sostre, and heard the informant ask Sostre if he was doing any business. Martin Sostre stated that he was. The informant told Sostre that he wanted to "Cop a bag". Sostre told the informant that he did not want to do any business with me standing there. The informant told Sostre that I was "OK" but Sostre stated he would not transact business with a starnger present.

The informant and I walked out of the store. The informant told me stand in the doorway and he went back inside. I stood in the doorway and saw the informant again approach Sostre and have a converstaion with him I then saw the informant again approch a female now identified to me as Geraldine Robinson and hand her some money. I saw her count the money and say something to Sostre. At this time Sostre walked to the rear of the store come back out and walk to the counter. He then extended his hand to the informant and the informant extented his hand to met Sostres. The informant left the store and joined me at the doorway.

We walked together to where Det.Sgt.Gristmacher was parked and got into his car. The informant then handed Sgt.Gristmacher a small glassine envelope which we examined and found to contain a white powder. We then drove to Main & Dodge St. in Buffalo where I observed Sgt. Gristmacher test the above mentioned powder with a small vial of acid known as the Marquis Reagent test. At this time Sgt.Gristmacher got out of the car and I drive the informant back to the buffalo Police Dept to await the arrival of Sgt.Gristmacher.

TPR.LEWIS STEVERSON

Subscribed and sworn to
before me this 17th day
of July 1967. Alvin R. Gristmacher
Commissioner of Deeds
in and for the City of
Buffalo N.Y.

Sostre
Holas

UNITED STATES DISTRICT COURT

WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
MARTIN SOSTRE,

Petitioner

-vs-

Civil 1972-237

FRANK M. FESTA, Superintendent of
Erie County Jail, and ROBERT J.
HENDERSON, Superintendent of
Auburn Correctional Facility,

Respondents

DECISION
and
O R D E R

CURTIN,
~~XXXXXXXX~~ DISTRICT JUDGE

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA ex rel.
MARTIN SOSTRE,

Petitioner

-vs- Civil 1972-237

FRANK M. FESTA, Superintendent of
Erie County Jail, and ROBERT J.
HENDERSON, Superintendent of
Auburn Correctional Facility,

Respondents

APPEARANCES: New York Civil Liberties Union
(Paul G. Chevigny, New York, New York,
Herman Schwartz & Edward I. Koren,
Buffalo, New York, of Counsel);

National Conference of Black Lawyers
(W. Haywood Burns, of Counsel)
New York, New York;

Lynn Walker, New York, New York,

for Petitioner.

Louis J. Lefkowitz, Attorney General of
the State of New York (Douglas S. Cream,
Assistant Attorney General, of Counsel),
Buffalo, New York, for Respondent Robert
J. Henderson.

This is an application for a writ of habeas corpus by state prisoner Martin Sostre, who was convicted

on March 18, 1968 of possession of a dangerous drug, sale of a dangerous drug and second degree assault in Erie County Court before County Court Judge Frederick M. Marshall. He was sentenced for the sale of the drug to an indeterminate term of not less than twenty-five (25) years or more than thirty (30) years, for assault in the second degree to a term of not less than five (5) or more than ten (10) years, for possession of the drug to a term of one (1) year, and for contempt of court committed on March 18, 1968 to a term of thirty (30) days. The court ordered the sentences to run consecutively.

The application to this court, which seeks only to set aside the conviction for the sale of the dangerous drug, is based on the recantation of the testimony of the principal prosecution witness at Sostre's trial. That witness was Arto Williams, a heroin addict, awaiting trial in the Erie County Jail on a larceny charge. During Sostre's trial, Williams, who became an informant for the Buffalo Police Department Narcotics Squad, testified that he purchased heroin from the petitioner on July 14, 1967. In April of 1971, Williams executed an affidavit recanting that testimony. In his affidavit Williams swears that he lied at

Sostre's trial, that Sostre never sold him any drugs, and that Williams framed Sostre to avoid his own conviction as a second felony offender. The affidavit further states that Williams was recanting his testimony after realizing "the importance of telling the truth and . . . after discussion with . . . [a] coordinator of Tuum Est." Based upon the Williams affidavit, petitioner applied for a writ of error coram nobis in the Erie County Court. Because Williams resided in California and refused to voluntarily come to New York State, and because the state court was without the power to obtain his attendance by subpoena or order, Sostre was unable to secure the attendance of Williams at a hearing on his coram nobis application. Thus, based on Sostre's inability to produce Williams, the application for a writ of error coram nobis was denied on March 30, 1972. On that same day, petitioner filed this application for a writ of habeas corpus. Petitioner has not appealed the dismissal of the state coram nobis application, but counsel have stipulated that the absence of any provision under state law to secure the attendance of Williams as a witness in the state court

proceeding would make any such appeal futile. Although at the time this action was commenced petitioner's direct appeal from his conviction was still pending in the New York State courts, counsel for both parties have agreed that the issues here are presented outside the trial record and are thus not reviewable on direct appeal of petitioner's conviction.[1]

The court finds that petitioner is entitled to proceed under Title 28, United States Code, Section 2254(b), which provides in part that

> [a]n application for a writ of habeas corpus in behalf of a person in custody pursuant to the judgment of a State court shall not be granted unless it appears . . . that there is either an absence of available State corrective process or the existence of circumstances rendering such process ineffective to protect the rights of the prisoner.

The proceedings in this court were delayed for some time because petitioner's counsel had difficulty locating Arto Williams, who was in California. In May of 1973, Williams was located in custody in California and an application was made by petitioner for a writ of habeas corpus ad testificandum. The writ was granted

and, through the cooperation of the United States Attorney and the United States Marshal, Williams was transported from California to Buffalo, New York. After also ordering Sostre's appearance, a hearing was held in this court on May 29 and May 30, 1973. At the hearing the court heard testimony from Arto Williams, Martin Sostre and various police officers who participated in the investigation and arrest. The court received a transcript of petitioner's Erie County Court trial and various exhibits. These exhibits consisted of photographs of the Martin Sostre bookstore where the alleged sale occurred, and a copy of the affidavit of State Trooper Lewis Steverson upon which the application for a search warrant was based. By stipulation of counsel, the court considered exhibits A through J, which are annexed to a notice of motion dated July 18, 1973. These exhibits set forth the details of Arto Williams' criminal record after he left the Buffalo area for California. The court sustained petitioner's objection to, and has not considered, exhibit K, a letter written by a Buffalo attorney.

nt Narcotics Squad and State Trooper Lewis T.
n. After being searched by Detective Gristmacher,
accompanied the two police officers in a police
to the neighborhood of a bookstore operated by
ndant Martin Sostre, at 1412 Jefferson Avenue in
of Buffalo. Upon arrival, he received $15.00
ective Gristmacher and he and Trooper Steverson,
in plain clothes, proceeded to the bookstore on
hen Williams and Steverson entered the store,
nd Geraldine Robinson were behind the counter,
far from the entrance.

At trial, no witness described the bookstore
s or set forth the exact positions of the parties
the transaction. Williams testified that after he
verson entered the store, he asked Sostre whether
was "doing any business." Sostre responded that
not want to do any business with strangers in the
Trooper Steverson's testimony at the trial on this
as somewhat different. He recalled that Williams
ostre if he could "cop a bag." Sostre looked at
on and said he did not know him and that he would

not do business in front of a stranger. Williams stated that he and Steverson then walked out of the store, Williams reentered and Steverson remained standing in front, a little to the left of the doorway with the door open. Williams could see Steverson and, from his vantage point, Steverson could observe Williams, Sostre and Geraldine Robinson. Steverson saw Williams give some money to Geraldine Robinson, who counted it and then said something to Sostre who was standing next to her. At trial both Steverson and Williams testified that Sostre then proceeded to the rear of the store, returned to the front and handed Williams a white glassine envelope. Upon receiving the envelope, Williams left the store and returned to Gristmacher's automobile with Steverson, where Williams handed the glassine envelope to Gristmacher. A later analysis revealed the contents of this envelope to be heroin.

While Williams and Steverson were at the bookstore with Sostre, Troopers John Wilcox and John Steinmetz testified that they were able to observe the activities in the bookstore from a surveillance position across the street. The troopers testified that they saw Williams

and Steverson enter the bookstore, Steverson leave with Williams, Williams reenter, Steverson stand in front of the store and Williams again come out of the store and leave with Steverson. Further, Trooper Wilcox testified that he saw Williams hand money to the woman in the store who was standing next to Sostre. Thereafter, Wilcox observed Sostre disappear into the rear of the store and then return to the front where he handed Williams "something." Trooper Wilcox made these observations with the assistance of a telephoto lens.

After Williams delivered the envelope to Gristmacher, the officers executed a search warrant which they had previously obtained for the premises. They arrested Sostre, found a marked $10 bill in his possession, searched the bookstore and found ten glassine envelopes containing heroin in a filing cabinet in the rear of the store.

THE HEARING

At the hearing, Arto Williams testified that after he was arrested in June 1967 on a felony charge,

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he contacted the Buffalo Police Department by letter, offering assistance. A short time thereafter, Detective Alvin Gristmacher of the Buffalo Police Narcotics Squad visited Williams in jail. Gristmacher asked Williams whether he knew anyone selling drugs in the Buffalo area. After Williams named a few individuals, Gristmacher asked him if he knew whether Sostre was selling drugs. Williams responded "yes." At that, Gristmacher said: "Well, we are very interested in Sostre because we believe that he was the cause of the riot at the time in '67." About a week later, Officer Gristmacher returned to the jail with Michael Amico, then Chief of the Narcotics Division in the Buffalo Police Department. Williams again stated that he knew that Sostre was selling drugs. On the next day, July 14, Williams claims he was released on his own recognizance and brought to Police Headquarters where he met Officer Gristmacher. Gristmacher gave Williams some money and arranged to meet him at about 9:00 p.m. that evening. According to Williams, he left, bought some heroin, used one-half of it and kept the rest. He also claimed that he obtained additional drugs from other

individuals on the street and was still high when he met with Officer Gristmacher that evening. After meeting Gristmacher, they drove to Police Headquarters and Gristmacher went inside, leaving Williams alone in the car for about fifteen minutes. He then returned with Trooper Steverson. According to Williams, while Gristmacher was away from the car Williams secreted the partial bag of drugs he had purchased in the afternoon under the front seat. After driving around for a while, Gristmacher stopped at a judge's home where he obtained a search warrant. Then Gristmacher drove Steverson and Williams to the vicinity of the Sostre bookstore. Williams testified that while they were driving around, and before he got out of the car, he retrieved the half bag of drugs which he had previously placed under the right front seat. Gristmacher then gave $15.00 to Williams and he and Steverson left the car and walked to the Sostre bookstore. Williams testified that when he entered the store with Steverson, Sostre was standing behind the counter alone. After a greeting, he indicated to Sostre that he wanted to see him outside of Steverson's presence. Williams explained that this desire to see

Sostre alone was communicated to Sostre by means of a motion which he could not describe at the hearing, but which he claims Sostre understood. When Sostre asked Steverson to leave, Williams and Steverson walked outside together.

During the cross-examination of Trooper Steverson by counsel for petitioner, a more detailed description of the premises and the relative position of the participants during the alleged sale was elicited. Trooper Steverson testified that when he and Williams entered, Sostre and Geraldine Robinson were standing about fifteen feet from the door of the store behind a short counter. During the transaction with Williams, they were facing the street, Robinson to the right and Sostre to the left, to one viewing from the outside. Williams was in front of them on the other side of the counter, with his back to the street. During the time of the alleged sale, Steverson stood in front of the store, about three feet from the doorway.

After walking outside with Steverson, Williams reentered the store and had a conversation with Sostre

STATE OF NEW YORK, COUNTY OF ss.: AFFIDAVIT OF SERVICE BY MAIL

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within upon attorney(s) for

about $15.00. Several versions of this conversation were given at the hearing. Williams said that he gave $15.00 to Sostre to hold for him, without giving a reason for this request. Sostre recalled that Williams asked him to hold $15.00 so he would not "blow it." In his direct examination at the hearing, Williams stated that after he gave the $15.00 to Sostre, he brought his hand back across the counter and passed it over his shirt pocket. He said that after he gave Sostre the money, Sostre went to the rear of the store and Williams heard him talking to someone whom he assumed to be Geraldine Robinson. Then Sostre returned to the front of the store where he and Williams talked for a minute before Williams left. During cross-examination Williams said that after he gave Sostre the $15.00, Sostre went to the back room to give the money to Geraldine Robinson. When Sostre returned to the front of the store and approached the counter, Williams dropped his hand into his shirt pocket, but could not recall whether Sostre's hand touched his or not. On this point, Sostre's account of what occurred is different from Williams' version on either his direct or cross-examination. Sostre testified that after Williams

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requested him to hold the money so that he would not "blow it," Sostre accepted it, Williams and he made small talk and then Williams left. Sostre said that he put some of the money in the register and gave some of it to Geraldine Robinson, but he did not testify that he went to the rear of the store. He said that before Williams left he probably exchanged a slap-handshake with him but could not specifically recall. He was not cross-examined. After leaving the store, Williams and Steverson returned to the Gristmacher automobile by walking and gave Gristmacher the drugs which Williams claimed he obtained from the floor of the car, not from Sostre.

The Second Circuit, in the recent case of United States ex rel. Rice v. Vincent, Nos. 73-2195, 73-2196 (2d Cir., Feb. 7, 1974), considered the standards to be applied by the court in determining whether a witness's recantation requires a new trial. Citing Larrison v. United States, 24 F.2d 82, 87-88 (7th Cir. 1928), the court stated (emphasis original):

> [A] new trial should be granted when,
>
> (a) The court is reasonably well satisfied that the testimony given by

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a material witness is false.

(b) That without it the jury might have reached a different conclusion.

(c) That the party seeking the new trial was taken by surprise when the false testimony was given and was unable to meet it or did not know of its falsity until after the trial.

United States ex rel. Rice v. Vincent, supra at 1666.

The court finds in this case that petitioner has failed to meet the first criteria of the standard adopted in Rice. Noting that recantations of testimony given at trial are to be "looked upon with the utmost suspicion," United States v. Troche, 213 F.2d 401, 403 (2d Cir. 1954), quoting Harrison v. United States, 7 F.2d 259, 262 (2d Cir. 1925), the court is not reasonably satisfied that the testimony given by Arto Williams at petitioner's trial was false.

There are many reasons why Williams' testimony at the hearing is unworthy of belief. Although there is no evidence before the court that Williams was threatened, the record is clear that after he testified at the 1968 Sostre trial he feared injury in Buffalo and felt safer in California. After he was released on probation in

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Buffalo, Williams told Peter Notaro, who prosecuted the Sostre case as Assistant District Attorney, that he wanted his probation transferred to California because he was afraid of being injured by the "friends of Martin." In September 1970 he wrote a letter to his California probation officer in which he explained that he left Buffalo because he was fearful for his life after testifying in the Sostre case. He wrote: "I guess by now you know my life is in danger." In July 1969 while Williams was on probation, he left Buffalo without permission to go to California. During 1970 he joined Tuum Est, an organization which Williams explained is devoted to influence its members to be honest with themselves and to live within the eyes of the law. He testified that it was the influence of this organization that prompted him to execute the April 1971 affidavit recanting his trial testimony. Whether Williams is sincere about this explanation is questionable because he was arrested in September 1972 and again in December 1972, in California, on heroin felony charges. In early 1973 he pled to a misdemeanor drug count. His less than candid attitude with this court was exhibited during

cross-examination about these events when he insisted that he had not been arrested for a felony charge in California after the execution of the affidavit, and tried to explain away the arrest by insisting that it was for the sale of baby aspirin. His California probation was revoked in 1973 and, at the time of the hearing before this court, he was in the custody of California authorities.

Apart from the circumstances surrounding Williams' recantation, his story of the events of the evening of the Sostre arrest, on its face, is open to serious question. By his own account, when he met Sergeant Gristmacher on the evening of July 14, 1967, he was "high" from the drugs he had used during the afternoon and he had no idea of what he was expected to do. Williams' explanation that he was able to secrete the envelope, 1-7/8 inches long by 7/8 of an inch wide, under the front seat of the car, and retrieve it while sitting in the rear seat without Steverson or Gristmacher being aware of it, is difficult to believe. Steverson testified that Williams was in the front seat at all

times,while he was in the rear behind Williams, and that Williams never reached down for any article under the front seat.

On each occasion when Williams testified about his transaction with Sostre, he has given a different account. At the trial, Williams said he gave $15.00 to Geraldine Robinson who counted it and passed it to Sostre. This version was confirmed at the trial and at the hearing by Trooper Steverson and the other witnesses. At the hearing, Williams testified that only Sostre was in the front of the store and he handed the $15.00 directly to him. At trial, Williams stated that after Sostre received the $15.00, Sostre went to the rear of the store, then returned to the front and handed Williams a white glassine envelope. Steverson and the others gave the same account of Sostre's movements and Steverson observed that a glassine envelope passed from Sostre to Williams. At the hearing, Williams testified that after he gave the money to Sostre, Sostre went to the rear of the store, then returned after a short interval and conversed briefly with Williams. Not even Sostre supports

this testimony, for he said nothing at all about going to the rear of the store after receiving the money from Williams. Furthermore, if Williams' purpose was only to have Sostre hold the money for him, he gave no explanation of why he remained at the counter after he gave the money to Sostre.

During the hearing, Williams attempted to recant his trial testimony that Sostre passed him a glassine envelope. He gave one version of this recantation on direct and another during his cross-examination. During direct examination, Williams said that after he gave the money to Sostre, he brought his hand back across the counter and then to his shirt pocket. Upon cross-examination, he said that he waited until Sostre returned from the rear of the store before putting his hand to his pocket, and he could not recall whether he and Sostre touched hands or not. Sostre testified to a third version of the incident. He stated that he thought he exchanged a slap-handshake with Williams.

While there is much in the record to question the credibility of Arto Williams, there is no reason not

to believe the testimony of the police officers who were involved. Steverson's testimony that he stood in the open doorway to Sostre's bookstore, that he had a clear and unobstructed view of the Sostre-Williams transaction, and that he saw a small glassine envelope pass from hand to hand was not shaken in any way at the hearing.[2] The testimony of the other officers relating to these events supports Steverson's testimony. There is no testimony at all that anyone made any promises whatever to Williams or made any suggestion to him other than to attempt to make an actual purchase of drugs from Sostre. Safeguards were taken to make sure that if Williams purchased drugs from Sostre, the purchase could be independently verified. He was searched, Trooper Steverson was close at hand to observe the proceedings and the other officers were across the street to verify whatever events took place in the store.

In petitioner's original application to this court for habeas corpus relief, he alleged that there was a "conspiracy" between police officers and Arto Williams to "frame" him. Counsel for petitioner has not adopted this position. The court notes that petitioner's

allegation of a conspiracy is not supported in any way by the evidence. Although an attempt was made to show a close working relationship between Williams and the police officers during the Sostre investigation, petitioner failed to reveal any improper activity on the part of any of the officers to induce Williams' trial testimony. Counsel for the petitioner agree that there was no attempt made by the police to persuade Williams to testify falsely against Sostre. During the hearing, Williams was asked on cross-examination:

> Q. All right. I will rephrase it for you, Mr. Williams. When was the first time, - I believe you testified it was at a meeting of an organization called TOUREST [sic].
>
> A. That's correct.
>
> Q. That you revealed your present story, when did that occur?
>
> A. I think it was in '71.
>
> Q. 1971?
>
> A. I'm not sure, but it could be.
>
> Q. And that was the first time that you revealed that you had lied on the stand prior to that?
>
> A. Yes.

Q. To anybody?

A. To anybody.

Q. Police officers?

A. To anyone. (Tr. at 40.)

On further cross-examination, Williams was asked:

Q. What kind of a frame were you asked to develop with Mr. Sostre, Mr. Williams?

MR. CHEVIGNY: I object, your Honor. There is no testimony he was asked to develop a frame. (Tr. at 143.)

Although counsel for petitioner do not argue that Williams and the police officers conspired to "frame" Sostre, counsel do argue that Williams' actions made him an agent of the state. The argument continues that since the state knowingly used false testimony at trial, the writ should issue. Because the court finds that Williams' testimony at the hearing was not believable, it is not necessary to determine whether he was an agent of the state. Based on all of the facts contained in the

record before the court, the writ is denied.

Certificate of probable cause and permission to appeal in forma pauperis are granted. Petitioner may file a notice of appeal with the Clerk of the United States District Court, United States Court House, Buffalo, New York, without the payment of filing fees.

So ordered.

JOHN T. CURTIN
United States District Judge

DATED: March 15, 1974

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1 On October 31, 1973 the Supreme Court, Appellate Division, Fourth Department, affirmed petitioner's conviction without opinion, but modified the judgment to provide that the sentences run concurrently. On January 16, 1974 petitioner's application for leave to appeal from that Appellate Division decision to the Court of Appeals of New York State was denied.

2 While Officer Stoverson's testimony at the hearing before this court was entirely consistent with his testimony at Sostre's trial, the court notes that on cross-examination at the hearing Steverson stated that in his affidavit sworn to on July 17, 1967, he made no mention of seeing a glassine envelope. He said in that affidavit: "He [Sostre] then extended his hand to the informant and the informant extended his hand to meet Sostre's." (Hearing Tr. at 222.)

State of New York)
) ss.:
County of New York)

74-1520

WAYNE S. BRAVEMAN, being duly sworn, deposes and says that he is not a party to this action, that he is over the age of eighteen years, and that he resides at 58 West 58th Street, New York, New York, and that on the 9th day of August, 1974, he caused to be served on Arlene Silverman, Esq., Assistant Attorney General, at Two World Trade Center, New York, New York, the address designated by said attorney for such purpose, a true copy of the within Petitioner-Appellants Limited Appendix, by having said document delivered by messenger to said address.

Wayne S. Braveman
WAYNE S. BRAVEMAN

Sworn to before me this
21st day of August, 1974.

Eve Cary
NOTARY PUBLIC

EVE CARY
Notary Public, State of New York
No. 31-5638240
Qualified in New York County
Commission Expires March 30, 1976

STATE OF NEW YORK. COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated:

.....

STATE OF NEW YORK, COUNTY OF

ATTORNEY'S AFFIRMATION

The undersigned, an attorney admitted to practice in the courts of New York State, shows: that deponent is

the attorney(s) of record for
in the within action; that deponent has read the foregoing
and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true. Deponent further says that the reason this verification is made by deponent and not by

The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

The undersigned affirms that the foregoing statements are true, under the penalties of perjury.

Dated:

.....

STATE OF NEW YORK, COUNTY OF ss.:

INDIVIDUAL VERIFICATION

, being duly sworn, deposes and says that deponent is the in the within action; that deponent has read the foregoing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Sworn to before me, this day of 19 .....

STATE OF NEW YORK, COUNTY OF ss.:

CORPORATE VERIFICATION

, being duly sworn, deposes and says that deponent is the of the corporation named in the within action; that deponent has read the foregoing and knows the contents thereof; and that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged upon information and belief, and as to those matters deponent believes it to be true.

This verification is made by deponent because
is a corporation. Deponent is an officer thereof, to-wit, its
The grounds of deponent's belief as to all matters not stated upon deponent's knowledge are as follows:

Sworn to before me, this day of 19 .....

being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at

That on the day of 19 deponent served the within
upon attorney(s) for
in this action, at
the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.
Sworn to before me, this day of 19

.....

STATE OF NEW YORK, COUNTY OF ss.: AFFIDAVIT OF PERSONAL SERVICE

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deponent served the within
upon
the herein, by delivering a true copy thereof to h personally. Deponent knew the person so served to be the person mentioned and described in said papers as the therein.
Sworn to before me, this day of 19

.....

NOTICE OF ENTRY

Sir:- Please take notice that the within is a *(certified)* true copy of a
duly entered in the office of the clerk of the within named court on 19

Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

NOTICE OF SETTLEMENT

Sir:—Please take notice that an order

of which the within is a true copy will be presented for settlement to the Hon.

one of the judges of the within named Court, at

on the day of 19
at M.
Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No. Year 19

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

UNITED STATES ex rel. MARTIN SOSTRE,

Appellant,

-against-

FRANK M. FESTA, et al.,

Appellees.

AFFIDAVIT OF SERVICE

Attorney for

Office and Post Office Address, Telephone

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

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STATE OF NEW YORK. COUNTY OF

CERTIFICATION BY ATTORNEY

The undersigned, an attorney admitted to practice in the courts of New York State, certifies that the within has been compared by the undersigned with the original and found to be a true and complete copy.

Dated: .....

STATE OF NEW YORK, COUNTY OF

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STATE OF NEW YORK, COUNTY OF ss.: **AFFIDAVIT OF SERVICE BY MAIL**

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upon attorney(s) for
in this action, at
the address designated by said attorney(s) for that purpose
by depositing a true copy of same enclosed in a postpaid properly addressed wrapper, in — a post office — official depository under the exclusive care and custody of the United States post office department within the State of New York.
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STATE OF NEW YORK, COUNTY OF ss.: **AFFIDAVIT OF PERSONAL SERVICE**

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Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

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Dated,

Yours, etc.,

Attorney for

Office and Post Office Address

To

Attorney(s) for

Index No. Year 19

Attorney for

Office and Post Office Address, Telephone

To

Attorney(s) for

Service of a copy of the within

is hereby admitted.

Dated,

.....

Attorney(s) for

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